

United States
Circuit Court of Appeals
For the Ninth Circuit.

THE UNITED STATES OF AMERICA,
Appellant,
vs.
WILLIAM F. KETTENBACH, GEORGE H. KESTER,
CLARENCE W. ROBNETT, WILLIAM DWYER,
and FRANK W. KETTENBACH,
Appellees.

No. 2209.

THE UNITED STATES OF AMERICA,
Appellant,
vs.
WILLIAM F. KETTENBACH, GEORGE H. KESTER,
CLARENCE W. ROBNETT, WILLIAM DWYER,
THE IDAHO TRUST COMPANY, a Corporation,
THE LEWISTON NATIONAL BANK, a Corporation,
THE CLEARWATER TIMBER COMPANY,
a Corporation, ELIZABETH W. THATCHER,
CURTIS THATCHER, ELIZABETH WHITE,
EDNA P. KESTER, ELIZABETH KETTEN-
BACH, MARTHA E. HALLETT, and KITTY
E. DWYER,
Appellees.

No. 2210.

THE UNITED STATES OF AMERICA,
Appellant,
vs.
WILLIAM F. KETTENBACH, GEORGE H. KESTER,
and WILLIAM DWYER,
Appellees.

No. 2211.

Transcript of Record.

VOLUME XIII.

(Pages 4575 to 4724 Inclusive.)

Appeals from the District Court of the United States for the
District of Idaho, Central Division.

United States
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THE UNITED STATES OF AMERICA,
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Transcript of Record.

VOLUME XIII.
(Pages 4575 to 4724, Inclusive.)

Appeals from the District Court of the United States for the
District of Idaho, Central Division.

In the Circuit Court of the United States for the District of Idaho, Northern Division.

No. 407.

THE UNITED STATES OF AMERICA,
Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H.
KESTER, WILLIAM DWYER,
Defendants.

Bill in Equity.

To the Honorable, the Judges of the Circuit Court of
the United States for the District of Idaho:

The United States of America, the complainant in
the above-entitled cause, by George W. Wickersham,
the Attorney General of the United States of
America, files this the said complainant's original
bill of complaint, against the persons hereinabove, in
the caption hereof, named as defendants.

The said complainant respectfully represents to
this Court:

I. That prior to the acts hereinafter complained
of, the complainant was the owner of the lands here-
inafter described, the said lands constituting a part
of the public lands of the United States and being
situated within the State and District of Idaho within
the jurisdiction of this Court.

That by an act of Congress of the United States,
entitled "An Act for the sale of timber lands in the
States of California, Oregon, Nevada and in Wash-
ington Territory," approved June 3, 1878, as

amended and extended to all public land States by the act of Congress of August 4, [1*] 1892, it was provided, among other things, in substance that surveyed public lands of the United States within the public land States, valuable chiefly for timber, but unfit for cultivation, might be sold to citizens of the United States or persons who declared their intention to become such, in quantities not to exceed 160 acres to any one person or association of persons, at the minimum price of Two Dollars and Fifty Cents (\$2.50) per acre.

It was further provided in said act as follows:

“That any person desiring to avail himself of the provisions of this act shall file with the register of the proper district a written statement in duplicate, one of which is to be transmitted to the General Land Office, designating by legal subdivision the particular tract of land he desires to purchase, setting forth that the same is unfit for cultivation, and valuable chiefly for its timber or stone; that it is uninhabited; containing no mining or other improvements, except for ditch or canal purposes where any such do exist, save such as were made by or belong to the applicant, nor, as deponent verily believes, any valuable deposit of gold, silver, cinnabar, copper, or coal; that deponent has made no other application under this Act; that he does not apply to purchase the same on speculation, but in good faith to appropriate it to his own exclusive use and benefit, and that he has not, directly or in-

*Page-number appearing at foot of page of original certified Record.

directly, made any agreement of contract, in any way or manner, with any person or persons, whatsoever, by which the title which he might acquire from the Government of the United States should inure, in whole or in part, to the benefit of any person except himself.”

which statement was required by said act to be verified by the oath of the applicant before the register or receiver of the land office within the district where the land was situated.

And said act further provides that:

“If any person taking such oath shall swear falsely in the premises, he shall be subject to all the pains and penalties of perjury and shall forfeit the money which he may have paid for said lands and all right and title to the same; and any grant or conveyance which he may have made, [2] except in the hands of *bona fide* purchasers, shall be null and void.”

And said Act further provided that after the expiration of 60 days’ publication of said application:

“The person desiring to purchase shall furnish to the register of the land office satisfactory evidence * * * that the land is of the character contemplated in this act, unoccupied and without improvements other than those excepted, either mining or agricultural, and that it apparently contains no valuable deposits of gold, silver, cinnabar, copper or coal; and upon payment to the proper officer of the purchase money of said land, together with the fees of the register and receiver, * * * the applicant may

be permitted to enter said tract, and, on the transmission of the General Land Office of the papers and testimony in the case, a patent shall issue thereon."

Said act further provided that effect should be given to its provisions by regulations to be prescribed by the Commissioner of the General Land Office.

II.

That pursuant to the authority given by said act, the Commissioner of the General Land Office prescribed and promulgated certain regulations to give effect to the provisions of said act, among others, the following:

That after the expiration of the 60 days' publication, the person desiring to purchase the land described in his application to purchase should under oath, make answer to certain questions as follows:

"Have you sold or transferred your claim to this land since making your sworn statement, or have you directly or indirectly made any agreement or contract in any way or manner, with any person whomsoever by which the title which you may acquire from the Government of the United States may inure, in whole or in part, to the benefit of any person except yourself?"

And

"Do you make this entry in good faith for the appropriation of the land exclusively to your own use and not for the use or benefit of any other person?" [3]

And

“Has any other person than yourself, or has any firm, corporation, or association, any interest in the entry you are now making, or in the land, or in the timber thereon?”

Also the following

“Did you pay, out of your own individual funds, all the expenses in connection with making this filing, and do you expect to pay for the land with your own money?”

And

“Where did you get the money with which to pay for this land, and how long have you had the same in your actual possession?”

III.

That heretofore, to wit, on the first day of July, in the year 1902, and at divers other times before and after that day, and before the making of the several entries hereinafter mentioned and designated, in the State of Idaho, William F. Kettenbach, George H. Kester and William Dwyer, who are hereinbefore and in the caption of this bill named as defendants, did unlawfully and corruptly combine, conspire, confederate and agree together, and with each other and with divers other persons, some of whom are hereinafter named and others of whom are to the complainant unknown, and did form, make and enter into an unlawful, corrupt and fraudulent conspiracy, combination and agreement with each other and with the other persons aforesaid, for the purpose and to the end of defrauding the complainant of the title and ownership of divers large tracts of public land then owned by the complainant and lying in the district of

public lands subject to entry at the land office of the United States located at Lewiston, in the State of Idaho, [4] and for the purpose and to the end of defrauding the complainant out of the use, occupation, and possession of the said tracts of public land; and for the purpose and the end of defrauding the United States by acquiring from the United States, through and by means of the Act of Congress approved on June 3, 1878, hereinbefore mentioned, for themselves and for each of themselves, the title to large bodies of timber lands, then being public lands and the property of the United States, in area and to an amount much greater than the area and the amount which they, the said defendants, individually or collectively, could lawfully, and in accordance with the provisions of the said statute, acquire; and for the purpose and to the end of defrauding the United States by causing and procuring divers and many other persons severally to make entry of, and to purchase from the United States, under and in professed accordance with the provisions of said statute, divers and many tracts of the public land, then being the property of the United States, they, the said defendants, then and there, intending and designing afterwards to acquire from the said other persons, the said lands so to be entered and purchased by the said other persons, and intending and designing to cause and procure the said lands to be entered and purchased in the interest and for the ultimate benefit and advantage of themselves, the said defendants, whereby, and in and by which procurement with the intent aforesaid provisions of the said statute should be

abused and perverted and the true intent and purposes of the said statute should be defeated; and for the purpose of accomplishing the said ends and of defrauding the United States by divers fraudulent and unlawful means, that is to say, by means of false, fraudulent and unlawful entries to be made of the aforesaid tracts of [5] public land at the land office aforesaid, and by means of perjury, the subornation of perjury, the procurement of false swearing, and by means of other falsehoods, false pretenses and misrepresentations, whereby the officers of the United States should be deceived and imposed upon and should be induced and procured to divest the United States of its title to the said lands and to convey the said title to the United States to divers persons not lawfully entitled thereto contrary to the laws of the United States and for the benefit, advantage and profit of the said defendants.

IV. That as a part of the said conspiracy and agreement so far as aforesaid made and entered into by the said defendants hereinbefore named, and as a part of the said unlawful and fraudulent means whereby the said unlawful purposes of the said conspiracy were to be effected, it was, at the times and place aforesaid by the said defendants, mutually agreed, designed and contemplated that they, the said defendants, should persuade, employ and otherwise induce and procure a large number of other persons severally to purchase and to make entries of divers tracts of the public lands aforesaid under and in pretended and apparent accordance with the aforesaid Act of Congress approved June 3, 1878,

as amended by the Act of Congress approved August 4, 1892, that before the said other persons should file the sworn statements by that statute prescribed, or should apply to enter and purchase such other lands or should otherwise take any steps or initiate any proceedings to that end, and before the making of such entries and purchases, and as a means of persuading and inducing the said other persons to make such entries and purchases, the said defendants should make and [6] enter into certain agreements, contracts and understandings with the said other persons, severally, whereby and by the terms of which agreements, contracts and understandings, the said defendants or some of them, should agree and contract to buy of the said other persons, severally, and the said other persons, severally should agree and contract to sell to the said defendants, or some of them, the respective tracts so to be entered and purchased by the said other persons when and so soon as the said other persons should obtain from the United States the titles to the said tracts by them to be entered and purchased, or shortly thereafter; that, thereupon and after the making of such unlawful contracts and agreements, and while the same should subsist and continue, the said defendants should cause and procure the said other persons severally to apply at the land office aforesaid to make entries of and to purchase divers tracts of the said public lands in professed accordance with the statutes aforesaid, and should cause and procure each of the said persons so applying, at the time of making his application to enter, and in connection with and as a part of such

application, to execute, sign, make oath to and file in the said land office a sworn statement of the character, substance, tenor and purport prescribed by the said act of Congress approved on June 3, 1878, which act is hereinbefore mentioned, stated and in part recited, in which statement such applicant should declare and on his oath represent, among other things, that he, the said applicant, did not apply to purchase the land by him applied for on speculation, but in good faith to appropriate the same to his own exclusive use and benefit, and that he had not, directly or indirectly, made any agreement or contract, in any [7] way or manner, with any person or persons whatsoever, by which the title which he might acquire from the Government of the United States should inure, in whole or in part, to the benefit of any person except himself, the said defendants intending, designing and contemplating that each of the said other persons so to be induced to make such applications and to file such sworn statements should in doing so commit and be guilty of wilful and corrupt perjury, and should swear falsely and corruptly, and should defraud the United States and fraudulently deceive and impose upon the officers of the said land office and upon other officers of the United States charged with the administration of the laws regulating the disposal of the public lands, inasmuch and because in truth and in fact each of the said persons so to be induced to make such applications should, before the making of his said application and the filing of his said sworn statement, as the said defendants intended and contemplated, have made with the said defendants or

some of them the agreement and contract aforesaid, by the terms of which such persons so to make application should have agreed to sell to the defendants or to some of them, and the defendants or some of them should have agreed to buy, the land and the title which such person should acquire from the United States by means of the application and entry by him to be made. [8]

V. That as a further part of the said conspiracy and agreement so as aforesaid made and entered into by said defendants hereinbefore named, and as a further part of the unlawful and fraudulent means whereby the said unlawful purposes of the said conspiracy were to be effected, it was, at the time and the place aforesaid by the said defendants, mutually agreed, designed and contemplated that they, the said defendants, should cause and procure the said other persons hereinbefore mentioned and such who were, as aforesaid, to be induced to apply to enter and purchase the tracts of public lands aforesaid, to make such publication and advertisement as are prescribed by the statute hereinbefore mentioned and in part recited, and after such publication and after the period of sixty days by the said statute prescribed, to appear before the proper officer or officers of the said land office and to make such proof before the said officers as is prescribed by the said statute, and then and there to answer on oath and in writing the interrogatories which were as aforesaid prescribed by the Commissioner of the General Land Office to be propounded to all persons seeking to make entries of public lands under the statute hereinbefore men-

tioned; and it was intended, designed and contemplated by the said defendants that each of the said other persons so appearing and answering should, in answer to the said interrogatories when the same should be propounded to him, on his oath declare, represent and swear, among other things, that he had not, since the making of the sworn statement previously as aforesaid made and filed by him in applying to make entry, sold or transferred his claim to the land sought by him to be entered; and that he, the said applicant, had not, at the time of his appearing and answering the said interrogatories, [9] directly or indirectly made any contract or agreement or contract in any way or manner, with any person whomsoever, by which the title sought by such applicant to be acquired might inure, in whole or in part, to the benefit of any person except himself; and that he, the said applicant, was at the time aforesaid making his intended entry in good faith for the appropriation of the land exclusively to his own use and not for the use and benefit of any other person; and that no other person than himself, the said applicant, and that no firm, corporation or association, had, at the time last aforesaid, any interest in the said entry or in the land sought to be entered or in the timber upon said land; the said defendants intending, designing and contemplating that each of the said other persons so to be caused and procured to answer the said interrogatories in the manner and to the effect last stated should in doing so commit and be guilty of wilful and corrupt false swearing, and should swear falsely and corruptly, and should defraud the United States, and

should fraudulently deceive and impose upon the officers of the United States charged with the administration of the laws regulating the disposal of the public lands, inasmuch and because in truth and in fact each of the said persons so to be induced to make the proofs and to answer the interrogatories aforesaid in the manner and to the effect aforesaid should, as the said defendants intended and contemplated, before the making of such proofs and answers, have made and entered into the contracts and agreements hereinbefore stated, which contracts were to be, at the time last aforesaid, still continuing and subsisting, by which the title to be by him acquired should inure to the benefit of the said defendants or of some of them, and by which the said defendants or some of them should have an interest in the land and the [10] title so to be acquired, and by reason of which contract and agreement such person seeking to make entry did not do so in good faith to appropriate such land to his own exclusive use and benefit, but for the use and benefit of the said defendants or some of them.

VI. That as a further part of the said conspiracy and agreement so as aforesaid made and entered into by the said defendants hereinbefore named, and as a further part of the unlawful means whereby the said unlawful purposes of the said conspiracy were to be effected, it was, at the times and the place aforesaid, by the said defendants, mutually agreed, designed and contemplated that they, the said defendants, after having procured the other persons hereinbefore mentioned to make application to enter the lands

hereinbefore mentioned in the manner and under the circumstances aforesaid should furnish and advance to each of the said persons so much money as should be necessary to enable such person to pay to the proper officers of the United States the amount of money prescribed by law to be paid upon the making of the entry by such person to be made, and that the sum so by the defendants advanced should be deducted from the amount agreed to be paid by them to such person as the purchase price of the land by him entered; and it was further intended and contemplated by the said defendants that they should cause and procure each of the said other persons, who were to be induced to make entries as aforesaid, when such person should appear before the proper officers of the aforesaid land office to answer the interrogatories that he, the said person then applying to make entry, had paid out of his own individual funds all the expenses in connection with the filing by him made; and that he [11] expected to pay for the land by him sought to be entered with his own money; and that the money with which he intended to pay for the said land was derived by him from other sources than the defendants, and that he had had the said money in his actual possession for a longer period than in fact he had so had the same; the said defendants mutually intending, designing and contemplating that each of the said other persons, so to be caused and procured so to answer the said interrogatories, should in doing so commit and be guilty or wilful and corrupt false swearing, and should swear falsely and corruptly and should defraud the United States, and should

fraudulently deceive and impose upon the officers of the United States, concerned with the administration of the laws regulating the disposal of the public lands, inasmuch and because in truth and in fact each of the said persons so to be caused and procured to answer the said interrogatories in the manner and to the effect aforesaid should, as the said defendants intended and contemplated, before the making of such answers, have received from the said defendants or from some of them the money by him to be used in the purchase of the land sought by him to be entered, and should not pay or intend or expect to pay for the said land out of his own individual funds or with his own money, and should not pay or intend or expect to pay the expenses of his filing and entry out of such funds or money, and should, moreover, swear falsely and fraudulently in respect of other matters, the subject of such interrogatories. [12]

VII. That thereafter, that is to say, after the formation and making of the said unlawful conspiracy and agreement so as aforesaid made and entered into by the said defendants hereinbefore named, and at divers times in the State of Idaho, in pursuance and execution of the said conspiracy and for the purpose of effecting the said unlawful purpose thereof, the said defendants, or some of them, did make and enter into fraudulent, corrupt and unlawful contracts, agreements, arrangements and understandings with a large number of persons, severally, that is to say, with Charles E. Loney, Mary A. Loney, James T. Jolly, Effie A. Jolly, Clinton E. Perkins, Frank J. Bonney, Charles S. Myers, and Jan-

nie Myers, severally, and with divers other persons who are to the complainant unknown, but whose names, when the same shall be discovered, the complainant prays leave to add to this bill by proper amendment, and to seek appropriate relief in respect of the lands by them fraudulently obtained from the complainant; that, in and by the said unlawful contracts, agreements, arrangements and understandings so as aforesaid made by the said defendants with the said other persons, each of the said other persons severally agreed and arranged with the said defendants or with some of them that he or she would make an entry and purchase of a tract of the public land of the United States under and in pretended and apparent accordance with the aforesaid act of Congress approved on June 3, 1878, as amended on August 4, 1892, and would, upon obtaining title to the said tract from the United States, convey the said title and tract to the defendants or to some of them; and the said defendants, or some of them, acting for all, agreed, contracted and arranged that they would pay to each of the said other persons a [13] certain sum of money for the tract of land by him or her so to be entered and by way of recompense to such person for his or her costs, labor and trouble incurred in acquiring title to the said tract from the United States; and the said defendants further agreed and promised to furnish and advance to each of the said other persons so much money as might be necessary to enable him or her to pay for such land and to defray the other expenses incident to the obtaining of title to such

land from the United States.

VIII. That thereupon, that is to say, at divers times after the making by the said defendants as aforesaid of the unlawful, corrupt and fraudulent agreements, contracts, arrangements and understandings with the said Charles E. Loney, Mary A. Loney, James T. Jolly, Effie A. Jolly, Clinton E. Perkins, Frank J. Bonney, Charles S. Myers and Jannie Myers, named in the last paragraph hereof, the said defendants, in pursuance and execution of the aforesaid unlawful and fraudulent conspiracy, and to effect the aforesaid unlawful purposes thereof, and in accordance with and in pursuance of the mode, scheme, method and means hereinbefore set out and stated to have been by them mutually agreed upon, designed and contemplated, and in pursuance of and in accordance with the said unlawful, corrupt and fraudulent agreement, stated in the last preceding paragraph hereof to have been made and entered into by and between the said defendants and the said other persons, named in the said last paragraph, did, at divers times, unlawfully, corruptly and fraudulently cause, induce and procure the said Charles E. Loney, Mary A. Loney, James T. Jolly, Effie A. Jolly, Clinton E. Perkins, [14] Frank J. Bonney, Charles S. Myers and Jannie Myers, severally, to apply at the said land office of the United States located at Lewiston in the State of Idaho to purchase a tract of public land, then the property of the complainant, under the provisions of the aforesaid act of Congress approved on June 3, 1878, as amended by the act of Congress approved

on August 4, 1892, and in pretended and apparent accordance with the provisions and requirements of the said acts, the said defendants then and at all times thereafter well knowing that the said applications so made by the said other persons, and the entries so by the said other persons sought and intended to be made, were and would be false, fraudulent, illegal and invalid by reason of the fact, hereinbefore stated, that each of the said applications was made and each of the said entries was sought and intended to be made in accordance with and in pursuance of an unlawful, corrupt and fraudulent agreement, theretofore as aforesaid made and then and thereafter subsisting, whereby the person so applying and seeking to enter each tract had agreed to sell to the said defendants such tract upon the acquisition by him from the United States of title thereto and the said defendants had agreed to buy the said tract and the said title.

IX. And the said defendants hereinbefore named, in further pursuance of the aforesaid conspiracy, and further to effect the said unlawful purposes thereof, and further in pursuance of, and in accordance with the said scheme, mode, method and means theretofore as aforesaid by them mutually agreed upon, designed and contemplated, [15] and in further pursuance of, and further in accordance with the unlawful, corrupt and fraudulent agreements theretofore as aforesaid made by them with the said Charles E. Loney, Mary A. Loney, James T. Jolly, Effie A. Jolly, Clinton E. Perkins, Frank J. Bonney, Charles S. Myers, Jannie Myers,

hereinbefore named, did also, at divers times, cause, induce and procure the said Charles E. Loney, Mary A. Loney, James T. Jolly, Effie A. Jolly, Clinton E. Perkins, Frank J. Bonney, Charles S. Myers, Jan-nie Myers and each of them, severally to appear before the officers of the aforesaid land office and each of them in connection with and as a part of his or her application to purchase a tract sought to be by him or her entered, to make, subscribe, make oath to and file in the said land office, a written statement of the character, substance, tenor and purport prescribed by the aforesaid statute to be filed by persons desiring to avail themselves of the provisions thereof, and did cause, induce and procure the said persons, and each of them, then and there to make and subscribe their respective written statements as aforesaid, and to state respectively in substance that he or she, the applicant, did not apply to purchase the land described in his or her statement, on speculation, but in good faith to appropriate it to his or her own exclusive use and benefit, and that he or she had not made any agreement or contract, directly or indirectly, or in any way or manner with any person or persons whomsoever by which the title which he might acquire from the Government of the United States might inure in whole or in part to the benefit of any person except himself; which said respective applications and each of them were then and there duly filed in the said United States [16] land office.

X. And the said defendants heretofore named, in further pursuance of the aforesaid conspiracy,

and further to effect the said unlawful purposes thereof, and further in pursuance of and in accordance with the said scheme, mode, method and means theretofore as aforesaid by them mutually agreed upon, designed and contemplated, did also at divers times furnish and advance to divers and several of the said other persons hereinbefore named, and stated to have been induced and procured by the said defendants to make unlawful and fraudulent entries of public lands, divers and considerable sums of money for the purpose of enabling such other persons to purchase and pay for the lands by them respectively sought to be entered and upon the agreement and with the understanding made and had with each of such persons that the money so furnished was by way of advancement upon the purchase price theretofore agreed to be paid to such person by the said defendants for the land to be entered and acquired by such person and was to be applied by such person to the purchase of, and the payment for, the tract by him to be entered, the said defendants then and at all times thereafter, designing, intending and expecting that each of the said persons so receiving such sums of money should and would, when he or she should be questioned upon the subject by the officers of the aforesaid land office, deny and conceal from the said officers the fact that he or she had received such money from the said defendants, and should and would, in answer to the interrogatories to be propounded by the said officers, falsely and fraudulently state, on his or her oath, in writing, that he or she had [17] obtained

the said money from other persons or by other means, for the purpose and to the end that the said officers and other officers of the United States concerned and charged with the administration of the laws governing the disposal of the public lands might and should thereby be deceived, imposed upon and fraudulently misled, and so prevented from further inquiry, investigation and consideration concerning such entries, whereby the truth and the facts hereinbefore stated might be discovered and the fraudulent character of the several transactions disclosed, and that the said officers might and should thereby be fraudulently and mistakenly caused to believe that such entries were lawful and honest and so to be induced to approve the said entries and to cause patents to be issued thereon, conveying to the several said persons the tracts by them respectively entered.

XI. That thereafter, pursuant to the said unlawful and corrupt conspiracy, combination, confederation and agreement, and in furtherance thereof and to carry out and effect the object and purpose thereof, the said defendants hereinbefore named did induce and procure the said other persons hereinbefore named, and each of them, to appear before the said officers of the said land office of the United States at Lewiston, Idaho, and to answer the certain interrogatories hereinbefore *before in the complaint* set out, prescribed by the commissioner of the General Land Office, pursuant to the authority contained in the act aforesaid; and each of the said persons then and there by the procurement of the said

William F. Kettenbach, George H. Kester and William Dwyer did answer such questions in substance and to the effect that he or she had not sold or transferred his or her claim to the land [18] for which he or she made application to purchase since making his or her sworn statement, or had directly or indirectly made any agreement or contract in any way or manner with any person whomsoever by which the title which he or she might acquire from the Government of the United States might inure in whole or in part to the benefit of any person except himself or herself, and that he or she made his or her entry in good faith for the appropriation of the land exclusively to his or her own use and not for the use or benefit of any other person, that no other person than himself or herself, nor any firm, corporation or association had any interest in the entry which he or she was then making, or in the land or in the timber thereon, that he paid out of his or her own individual funds all the expenses in connection with making said filings and entry and that he expected to pay for the land with his or her own money, the said person so answering being in so doing guilty of false and fraudulent swearing, and intending to deceive and impose upon, and actually deceiving and imposing upon the said officers of the said land office and the answers so made by such persons being false and fraudulent, in this, that the said persons had, in truth and in fact, theretofore severally agreed and contracted, as aforesaid, with the said defendants hereinbefore named to sell to the said defendants the titles by the said other

persons sought to be acquired, and had made agreements whereby such titles should inure to the benefit of the said defendants, and did not make the said entries in good faith for the appropriation of the lands by them severally sought to be entered to their own exclusive use, respectively, and did not severally pay out of their own individual and respective funds all the expenses in connection with the [19] said filings and entries, and did not severally expect to pay for the land by them respectively entered with their own moneys, and the said answers being in divers other respects and particulars false, fraudulent, untrue and deceitful, and being intended to deceive, defraud and mislead, and actually deceiving, defrauding and misleading, the said officers of the said land office and other officers of the United States charged with and concerned in the administration of the laws providing for the disposal of the public lands of the United States.

XII. That at the divers and several times hereinbefore referred to, the said Charles E. Loney and the other persons hereinbefore named and stated to have made and entered into certain unlawful, corrupt and illegal agreements, arrangements and understandings with the said defendants hereinbefore named, severally did apply to enter, and did make entries of divers tracts of public land of the United States subject to disposal at the aforesaid land office, and each of the said persons did consequently and in the usual course of administration of the public laws obtain from the United States a patent whereby the United States conveyed to each of the

said persons, severally the tracts by him or her entered, that is to say, that the said Charles E. Loney did on April 3, 1906, make application to enter, and on June 19, 1906, made entry of, and on September 11, 1907, obtained a patent conveying to him, lot four and the southwest quarter of the northwest quarter, and the north half of the southwest quarter of section four, in township thirty-six north of range five east of Boise meridian; [20] and the said

Mary A. Loney did on March 23, 1906, make application to enter, and on ——— made entry of, and on September 19, 1907, obtained a patent conveying to her, the northeast quarter of the northeast quarter of section eighteen and the west half of the northwest quarter, and the northwest quarter of the southwest quarter of section seventeen in township thirty-six north of range five east of the Boise meridian; and the said

Frank J. Bonney did on June 30, 1906, make application to enter, and on October 11, 1906, made entry of, and on December 28, 1907, obtained a patent conveying to him, the northwest quarter of the southwest quarter of section thirty-four in township thirty-seven north of range five east, and the east half of the southeast quarter of section thirty-three in township thirty-seven north of range five east, and lot one of section four in township thirty-six north of range five east, all of Boise meridian; and the said

James T. Jolly did on April 3, 1906, make application to enter, and on June 19, 1906, made entry of, and on September 11, 1907, obtained a patent con-

veying to him, the south half of the northeast quarter, and the east half of the southeast quarter of section four in township thirty-six north of range five east of Boise meridian; and the said

Effie A. Jolly did on March 23, 1906, make application to enter and on June 12, 1906, made entry of, and on June 3, 1909, obtained a patent conveying to her, the east [21] half of the northwest quarter and the north half of the northeast quarter of section seventeen in township thirty-six, north of range five east of Boise meridian; and the said

Charles S. Myers did on September 30, 1905, make application to enter, and on January 22, 1906, made entry of and on September 11, 1907, obtained a patent conveying to him, the northwest quarter of section twenty-nine in township thirty-eight north of range six east of Boise meridian; and the said

Jannie Myers did on March 19, 1906, make application to enter, and on June 6, 1906, made entry of, and on September 11, 1907, obtained a patent conveying to her, the west half of the southwest quarter of section twenty-five, in township thirty-eight north of range five east of Boise meridian; and the said

Clinton E. Perkins did on April 18, 1906, make application to enter, and on July 12, 1906, made entry of, and on September 11, 1907, obtained a patent conveying to him, lots three and four in section three in township thirty-six north of range five east, and the south half of the southwest quarter of section thirty-four of township thirty-seven north of range five east of Boise meridian.

XIII. That each of the said persons so making entry of and obtaining title to the tract by him or her entered, did apply to make and did make such entry, and did prosecute and carry on the proceedings, at the solicitation and instigation of the said defendants, being moved and stimulated thereto by the advice, request and promises of the said defendants hereinbefore named, and therein acting upon, in pursuance of, and in accordance with, the unlawful, corrupt and fraudulent arrangement, agreement and understanding theretofore made and entered into as aforesaid [22] between him or her and the said defendants, which said agreement, arrangement and understanding continued and subsisted throughout the whole of the said proceedings, whereby it had been and was agreed that the said defendants should buy from each of the said persons, and each of the said persons should sell and convey to the said defendants, the tract and the title by him or her to be acquired from the United States.

XIV. And the complainant further avers that each of the persons mentioned in the last preceding paragraph hereof and stated to have made entries, severally, of certain tracts of public land, in connection with his or her application to make entry of such land, and as a part of the said application, and as a necessary and material step in the proceedings to obtain a patent for the land by him or her sought to be entered, did file in the said land office a written statement, of the character, substance, tenor and purport prescribed by the Act of Congress aforesaid, wherein such person did, on his or her oath, falsely,

fraudulently and deceitfully swear in substance that he or she was not applying to purchase the tract of land by him or her sought to be entered on speculation, but in good faith to appropriate the same to his or her own exclusive use and benefit, and that he or she had not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whatsoever, by which the title which he or she should acquire from the Government of the United States should inure in whole or in part to the benefit of any person except himself or herself, whereas in truth and in fact each of the said persons was applying to enter the tract by him [23] or her sought to be entered upon speculation, and not for his or her own exclusive use and benefit, and had made an unlawful and fraudulent agreement with the said defendants herein before named, as aforesaid, whereby the title by him or her to be acquired should inure to the use and benefit of the said defendants, and the said statements so made by the said persons and each of them were known by the said persons and by each of them, and were known by the said defendants, to be false, untrue, fraudulent and deceitful.

XV. And the complainant further avers that each of the said persons hereinbefore named and stated to have made the entries hereinbefore mentioned and designated, did, in the course of the said proceedings had and prosecuted by them as aforesaid, appear before the said officers of the aforesaid land office and did, on his or her oath in writing, make answers to the several interrogatories which

had been as aforesaid prescribed by the Commissioner of the General Land Office to be propounded to the person seeking to make entries under the aforesaid act of Congress, which said interrogatories are hereinbefore set out, and which were propounded to each of the said persons; and in so making answer to the said interrogatories, each of the said persons did, upon his or her oath in writing, falsely, fraudulently and deceitfully declare and swear that he or she had not, directly or indirectly, made any agreement or contract, in any way or manner, with any person whomsoever, by which the title which he or she might acquire from the Government of the United States should inure, in whole or in part, to the benefit of any person except himself or herself, and that he or she was so making the entry by him or her offered to be made in [24] good faith for the appropriation of the land sought to be entered exclusively to his or her own use and not for the use or benefit of any other person, and that no other person than the said person so offering to enter, and no firm, corporation or association, had any interest in the said entry or in the land sought to be entered or in the timber standing upon the said land, whereas in truth and in fact each of the said persons had, as aforesaid, theretofore made and entered into the agreement hereinbefore stated with the said defendants, which agreement was then still continuing and subsisting, whereby each of the said persons so seeking to make entry had agreed to sell the land by him to be entered to the said defendants or some of them, and the title to be acquired by each of said persons

was to inure to the benefit of the said defendants, and the said answers so made by the said persons to the said interrogatories were by the said persons and by the defendants known to be false and fraudulent.

XVI. And the complainant further avers that several of the said persons named in the seventh paragraph hereof and therein stated severally to have made entries of divers tracts of public land, did, before the time they appeared at the aforesaid land office to make the proof required by the statute aforesaid and to answer the interrogatories hereinbefore mentioned as required to be answered by them, receive and accept from the said defendants hereinbefore named or some of them, certain sums of money, which sums were furnished and advanced to the said persons by the said defendants or some of them, in pursuance of and in accordance with the fraudulent and unlawful agreements and arrangements hereinbefore stated [25] and alleged to have been made between the said defendants and the said other persons, whereby the said defendants were to advance to the said other persons such money as should be necessary to enable such other persons to pay for and purchase the several tracts by such other persons respectively to be entered and purchased; and the said sums of money were by the said defendants furnished, and by the said other persons received and accepted, for the purpose of enabling the said other persons to make entries of, and to pay for, the several tracts of public land intended to be entered by such other persons, and upon a mutual agreement and understanding in each case that such

money was to be used and applied by the recipient thereof; and the said persons so receiving the said sums of money did use the same for the purpose aforesaid, and each of the said persons did, in making his or her entry, pay to the officers of the said land office the purchase price required by law to be paid for the land entered and purchased by such person, and did pay the other expenses by him or her incurred in the said proceeding, with the said money obtained and derived from the said defendants, or some of them, and not with money belonging to the persons making the entry or derived and obtained from other persons than the defendants. Nevertheless, each of the said persons, who had as aforesaid received the said sums of money from the said defendants, when he or she appeared at the said land office to make such proofs and to answer such interrogatories as have hereinbefore been mentioned and stated, did, in answer to those of the said interrogatories relating to the subject, on his or her oath, in writing, falsely, fraudulently and deceitfully swear and declare, in substance, that he or [26] she intended to pay and was about to pay the purchase price required by law as aforesaid out of funds and with money belonging to him or her, and being his or her individual property, and did untruly, falsely, and deceitfully state and represent that he or she had obtained such money from other persons and other sources than the said defendants.

Wherefore, and by reason of the said false, fraudulent and deceitful representations so made by the said persons seeking to make entries of the said

lands, the officers of the United States concerned in the proceedings were deceived and imposed upon, and were caused to believe that the entries so offered to be made were honest and valid entries; whereas, had the said officers been by the said other persons truly informed and apprised of the fact that the several sums of money so paid for the purchase of the said lands were the property of the defendants in this case and had been advanced as aforesaid by the said defendants, the said officers would have been caused to make, and it would have been their duty to make, further inquiry and investigation concerning the said proposed entries and the transactions connected therewith, and to give further consideration to the said entries and transactions, with the result that the facts hereinbefore stated would have been discovered, the fraudulent character of the several transactions hereinbefore set forth would have been discovered, and the making of the illegal, invalid and fraudulent entries sought by the said defendants and the said other persons to be made would have been prevented. [27]

XVII. And the complainant further avers that, by reason of the facts hereinbefore stated, and by reason of the unlawful conspiracy among the said defendants hereinbefore named, the unlawful agreements between the said defendants and the other persons who made the entries herein enumerated and designated, the perjury procured by the said defendants and committed by the said other persons in the procurement of the said entries, and false swearing, misrepresentations and concealment of material facts

committed and practiced by the said persons, and of the other matters which are hereinbefore set out, the said entries, and each of them were unlawfully made, and were and are illegal, fraudulent and invalid, and that the United States was and is defrauded thereby; and that, by reason of the said facts, the officers of the United States, charged with the administration of the laws providing for and governing the disposal of the public lands, and concerned in the transactions herein stated, were deceived, defrauded, misled and imposed upon, and caused to allow the said entries to be made, and induced to approve the said entries and to issue patents thereon; and that the said patents, by reason of the said facts, are invalid, and are voidable at the suit of the United States, as having been procured by fraud, perjury, misrepresentation and imposition and in violation of law, and having been issued and granted under fraudulent imposition and mistake of fact, and in fraud of the United States.

XVIII. And complainant further avers and charges that the said defendants, William F. Kettenbach, George H. Kester and William Dwyer by their aforesaid several unlawful, corrupt and fraudulent schemes and practices, and by and through the various persons heretofore, in this bill [28] of complaint, mentioned as employed by them for that purpose, fraudulently obtained and procured the patents of complainant to be issued to the various persons hereinbefore in this bill of complaint mentioned in connection with the several descriptions of said lands mentioned and set out. And your complainant fur-

ther avers and charges that the said pretended patents to the lands heretofore described were procured, as the defendants William F. Kettenbach, George H. Kester and William Dwyer and each of them, well knew at the time of procuring the same, in violation of the laws of the United States. And your complainant further avers and charges that in the case of each and every of such tracts of land in this bill of complaint described, the acts and conduct of the said defendants, William F. Kettenbach, George H. Kester and William Dwyer, and each of them, and each and every of their employees and confederates, were illegal and fraudulent, and that the patents procured from this complainant by and on behalf of said defendants, were and are, in each and every instance, fraudulent, invalid and voidable as against this complainant, and contrary to equity and good conscience, and being so, and the titles purporting to be conveyed thereby being vested in certain of the said defendants, the said patents ought to be vacated, set aside, voided and for naught held.

XIX. And the complainant avers and charges that the patents so unlawfully and fraudulently procured from the complainant by and on behalf of the said defendants William F. Kettenbach, George H. Kester and William Dwyer, for the several tracts of land in this bill of complaint mentioned and described were issued by this complainant in each and every instance, within six years of the filing of this [29] bill of complaint.

XX. Complainant further avers and charges that, pursuant to said unlawful and corrupt combination,

conspiracy and agreement, hereinbefore alleged and set forth and to effect the object and purpose thereof, the said William F. Kettenbach, George H. Kester and William Dwyer did induce the said several other persons hereinbefore named in connection with the description of the said several tracts of land to convey the same, in some instances to George H. Kester, in some instances to George H. Kester and William F. Kettenbach, or George H. Kester and W. F. Kettenbach; but complainant avers that in each and every instance such conveyances were executed for the benefit of the said defendants, William F. Kettenbach, George H. Kester and William Dwyer, or either or all of them and other person or persons unknown to the complainant, pursuant to the unlawful agreement hereinbefore alleged and set forth; and that, by means of such conveyances from the said several other persons to whom the patents of the United States were issued, the several titles purporting to be issued by the United States and conveyed to the said patentees are now vested in certain of the said defendants William F. Kettenbach, George H. Kester, and William Dwyer. Forasmuch, therefore, as the complainant has been cheated and defrauded of its public lands and is remediless at and by the strict rules of the common law, and is only relievable in a court of equity wherein such matters are fully cognizable and reviewable; and to the end that the said William F. Kettenbach, George H. Kester and William Dwyer may full, true, direct and certain answers make, according to the best of [30] their knowledge, information and belief, to all and

singular the matters and charges aforesaid, but not on oath, their answer on oath being hereby expressly waived, your complainant prays as follows:

That all of the said defendants hereinbefore in this bill named and the several persons hereinbefore named in connection with the description of said lands, may be held, adjudged and decreed to have defrauded the complainant of the lands and each and every description thereof hereinbefore set forth as patented by complainant to the several persons hereinbefore named, and that by reason of such fraud, the patents issued to them, or either of them, or to others in their behalf, be declared void, as such, be held for naught and set aside, and the said lands restored to the public domain of the complainant; and the said defendants, and each of them, be held to pay to the Treasurer of complainant, all such reasonable sums of money as it may have found necessary to lay out and expend in and about discovering and establishing the fraud as is hereinbefore set forth and charged, that this complainant may have all such further relief in the premises as may be conformable to equity and good conscience, and such as seems proper to this Honorable Court.

GEORGE W. WICKERSHAM,
Attorney General of the United States,
Solicitor for Complainant.

[Endorsed]: Filed September 4, 1909. A. L. Richardson, Clerk. [31]

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

THE UNITED STATES OF AMERICA,
Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H.
KESTER, and WILLIAM DWYER,
Defendants.

Demurrer to Bill in Equity.

To the Honorable Judges of the Circuit Court of the
United States for the District of Idaho:

Come now the defendants above named, and
demurrers to the bill in equity on file herein, and for
cause of demurrer allege:

1.

That said bill in equity does not state facts suffi-
cient to constitute a cause of action.

2.

That said bill in equity does not state facts suffi-
cient to confer jurisdiction on the above-entitled
court to hear and determine the matter attempted
to be raised and pleaded therein, and the said bill
does not state facts sufficient to show that the above-
entitled court has jurisdiction over any of the subject
matter contained or pleaded therein, or jurisdiction
to hear and determine the same.

3.

That said bill is indefinite, unintelligible, and un-
certain, and that such uncertainty consists in this,
to wit: That it does not appear therein in what way
or manner the said defendants acted, or what overt

acts were [32] committed by either of said defendants in procuring title to said tract of land, or any part thereof, or the manner in which the said land was acquired.

4.

That said bill in equity is further indefinite, unintelligible, ambiguous and uncertain, and that such uncertainty consists in this, to wit: That it does not appear therefrom whether or not the said alleged agreements or either thereof were made prior to the filing of the sworn statements of the various entrymen or subsequent to the filing of the sworn statement or prior to the making of final proof, and it does not appear therefrom that the said tracts of land, or either thereof at the date of filing of the bill in equity herein stood of record in the names of said defendants or either thereof.

5.

That said bill in equity as a whole does not state facts sufficient to constitute a cause of action against these defendants or either thereof.

GEO. W. TANNAHILL,

Solicitor for Defendants, William F. Kettenbach,
George H. Kester, and William Dwyer, Residing at Lewiston, Idaho.

State of Idaho,

County of Nez Perce,—ss.

Geo. W. Tannahill, being duly sworn, says that he is the solicitor for the defendants above named, and that said demurrer is made in good faith, and not for the purpose of delay, and is, as affiant verily believes,

well founded in point of law.

GEO. W. TANNAHILL.

Subscribed and sworn to before me this 5th day of October, A. D. 1909.

[N. P. Seal] SAMUEL O. TANNAHILL,
Notary Public in and for Nez Perce County, State
of Idaho. [33]

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

THE UNITED STATES OF AMERICA,
Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H.
KESTER, and WILLIAM DWYER,
Defendants.

Affidavit of Service of Demurrer to Bill in Equity.

State of Idaho,
County of Nez Perce,—ss.

Geo. W. Tannahill, being duly sworn, deposes and says that he is an attorney-at-law, and is the attorney of record for the above-named defendants in the above-entitled action, and that he resides in the city of Lewiston, Nez Perce County, State of Idaho:

That C. H. Lingenfelter is the United States District Attorney for the District of Idaho, and by virtue thereof, attorney for the United States of America, the plaintiff in said cause;

That he, the said C. H. Lingenfelter, resides at the city of Boise, County of Ada, State of Idaho; that

in each of said two places there is a United States postoffice, and between said two places there is a regular communication by mail;

That on the 5th day of October, A. D. 1909, deponent served a true copy of the foregoing Demurrer to Bill in Equity on file herein on the said C. H. Lingenfelter, the said attorney for said plaintiff, by depositing such copy of Demurrer to Bill in Equity on said date in the postoffice at said city of Lewiston as aforesaid, properly enclosed in an envelope addressed to the said C. H. Lingenfelter, United States District Attorney at the city of Boise, County of Ada, State of Idaho, his said place of residence, and prepaying the postage thereon.

GEO. W. TANNAHILL.

Subscribed and sworn to before me this 5th day of October, A. D. 1909.

[N. P. Seal] SAMUEL O. TANNAHILL,
Notary Public in and for Nez Perce County, State of Idaho.

[Endorsed]: No. 407. Filed October 9th, 1909.
A. L. Richardson, Clerk. [34]

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

THE UNITED STATES OF AMERICA,
Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H.
KESTER, and WILLIAM DWYER.

**Notice of Motion to Strike [Certain Portions from
Bill in Equity].**

NOTICE OF MOTION TO STRIKE.

To the Plaintiff Above Named, and to GEORGE W.
WICKERSHAM, Attorney General of the
United States of America, and by Virtue
Thereof, Attorney for Plaintiff:

TAKE NOTICE, that on the first day of the next
regular term of the above-entitled court, the same
being the 25th day of October, A. D. 1909, at the
courtroom of the said court at Moscow, Latah
County, Idaho, at ten o'clock A. M. of said day, the
defendants herein will move the above-entitled Court
to strike out of and from the bill in equity heretofore
served and filed herein the parts and portions
thereof set out and specifically described in the an-
nexed motion to strike, which is hereby referred to.

Upon the argument of said motion, there will be
used the bill in equity on file herein, the defendants'
motion to strike, and all files and records in the ac-
tion.

GEO. W. TANNAHILL,

Solicitor for Defendants, Residing at Lewiston,
Idaho. [35]

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

THE UNITED STATES OF AMERICA,
Complainant,

vs.

WILLIAM F. KETTENBACH, GEO. H. KES-
TER, and WILLIAM DWYER,
Defendants.

**Motion to Strike [Certain Portions from Bill in
Equity].**

MOTION TO STRIKE.

To the Honorable, the Judges of the Circuit Court of
the United States for the District of Idaho:

Comes now the defendants herein, and moves the
Court to strike out of and from the bill in equity on
file herein the following portions:

1.

All of paragraph two thereof, upon the ground
that the same is redundant, surplusage, irrelevant
and immaterial.

2.

All of paragraph five thereof, upon the ground
that the same is redundant, surplusage, irrelevant
and immaterial.

3.

Strike out all that portion of the prayer of said
bill in equity beginning with the word "and," the
same being the second word in line four from the top
of the last page of said bill, and ending with the word
"expended," the same being the last word in line six
from the top of the last page of said bill; also all that

portion of the prayer of said bill in equity beginning with the word "in," the same being the first word in line seven from the top of the last page of said bill, and ending with [36] the word "charge," the same being the fifth word in line eight from the top of the last page of said bill, upon the ground that the same is redundant, surplusage, irrelevant and immaterial.

Upon the argument of said motion there will be used the bill in equity heretofore served and filed herein, the defendants' demurrer, and notice of motion, and all of the files and records in the action.

GEO. W. TANNAHILL,
Solicitor for Defendants, Residing at Lewiston,
Idaho.

State of Idaho,
County of Nez Perce,—ss.

Geo. W. Tannahill, being duly sworn, upon oath says, that he is the solicitor for the defendants above named, and that the foregoing motion to strike is made in good faith, and not for the purpose of delay, and is, as affiant verily believes, well founded in point of law.

GEO. W. TANNAHILL.

Subscribed and sworn to before me this 5th day of October, A. D. 1909.

[N. P. Seal] SAMUEL O. TANNAHILL,
Notary Public in and for Nez Perce County, State
of Idaho. [37]

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H.

KESTER, and WILLIAM DWYER,

Defendants.

**Affidavit of Service of Motion to Strike [Certain
Portions of Bill in Equity].**

AFFIDAVIT OF SERVICE OF MOTION TO
STRIKE.

State of Idaho,

County of Nez Perce,—ss.

Geo. W. Tannahill, being duly sworn, deposes and says that he is an attorney-at-law, and is the attorney of record for the above-named defendants in the above-entitled action, and that he resides in the city of Lewiston, Nez Perce County, State of Idaho;

That C. H. Lingenfelter is the United States District Attorney for the District of Idaho, and by virtue thereof, attorney for the United States of America, the plaintiff in said cause;

That he, the said C. H. Lingenfelter, resides at the city of Boise, County of Ada, State of Idaho; that in each of said two places there is a United States post-office, and between said two places there is a regular communication by mail;

That on the 5th day of October, A. D. 1909, deponent served a true copy of the foregoing Notice of Mo-

tion and motion to strike certain portions of the bill in equity on file herein on the said C. H. Lingenfelter, the said attorney for said plaintiff, by depositing such copy of notice of motion and motion on said date in the postoffice at said city of Lewiston aforesaid, properly enclosed in an envelope, addressed to the said C. H. Lingenfelter, United States District to-torney of the city of Boise, County of Ada, State of Idaho, his said place of residence, and prepaying the postage thereon.

GEO. W. TANNAHILL.

Subscribed and sworn to before me this 5th day of October, A. D. 1909.

[N. P. Seal] SAMUEL O. TANNAHILL,
Notary Public in and for Nez Perce County, State
of Idaho.

[Endorsed]: No. 407. Filed October 9, 1909. A.
L. Richardson, Clerk. [38]

**[Marshal's Return of Service of] Subpoena Ad
Respondendum.**

I hereby certify that I received the within Subpoena Ad Respondendum, together with three duplicate copies, and certified copies of complaint, at Moscow, Latah County, Idaho, on the 20th day of Sept., 1909, and served the same upon William F. Kettenbach, by handing to and leaving with the said William F. Kettenbach, a duplicate copy of the within Subpoena Ad Respondendum, together with a certified copy of complaint, personally, at Lewiston, Nez Perce County, Idaho, on the 23d day of Sept., 1909.

Served the same upon William Dwyer, by handing

to and leaving with the said William Dwyer, a duplicate copy of the within Subpoena Ad Respondendum, together with a certified copy of complaint, personally at Lewiston, Nez Perce County, Idaho, on the 23d day of Sept., 1909. And after due search and diligent inquiry, I am unable to find the defendant Geo. H. Kester within the District of Idaho.

Moscow, Idaho, Oct. 2d, 1909.

S. L. HODGIN,
U. S. Marshal,
By J. E. Greene,
Deputy.

I hereby certify that I served the within subpoena ad respondendum upon George H. Kester, one of the defendants named therein, at Moscow, Latah County, Idaho, on October 26, 1909, by handing to and leaving with the said George H. Kester, personally, a duplicate of the within subpoena ad respondendum, together with a certified copy of the complaint.

Moscow, Idaho, Oct. 27th, 1909.

S. L. HODGIN,
U. S. Marshal.
By Jno. Jackson,
Deputy. [39]

*In the Circuit Court of the United States for the
Northern Division of the District of Idaho.*

IN EQUITY—No. 407.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H.

KESTER, and WILLIAM DWYER,

Defendants.

Subpoena Ad Respondendum.

The President of the United States of America, to
William F. Kettenbach, George H. Kester and
William Dwyer, Greeting:

You and each of you are hereby commanded that
you be and appear in said Circuit Court of the
United States, at the courtroom thereof, in Moscow
in said district, on the first Monday of November
next, which will be the first day of November, A. D.
1909, to answer the exigency of a Bill of Complaint
exhibited and filed against you in our said court,
wherein The United States of America is complain-
ant and you are defendants, and further to do and
receive what our said Circuit Court shall consider in
this behalf, and this you are in no wise to omit under
the pains and penalties of what may befall thereon.

And this is to COMMAND you, the MARSHAL of
said District, or your DEPUTY, to make due service
of this our WRIT OF SUBPOENA and to have
then and there the same.

Hereof fail not.

Witness the Honorable MELVILLE W. FUL-

LER, Chief Justice of the Supreme Court of the United States, and the Seal of our said Circuit Court affixed at Boise in said District, this 17th day of September in the year of our Lord One Thousand Nine Hundred and nine and of the Independence of the United States the One Hundred and thirty-fourth.

A. L. RICHARDSON,

Clerk.

[Endorsed]: Filed Nov. 29, 1909. A. L. Richardson, Clerk. [40]

*In the Circuit Court of the United States for the
Northern Division of the District of Idaho.*

No. 407.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H.

KESTER, and WILLIAM DWYER,

Defendants.

Exceptions to Bill in Equity.

To the Honorable, the Justices of the Circuit Court of the United States for the District of Idaho:

The defendants herein, William F. Kettenbach, George H. Kester, and William Dwyer, by leave of Court first had and obtained, file this their exceptions to the bill in equity filed herein September 17, A. D. 1909, as follows:

1.

For that the allegations in the first paragraph of said bill beginning with the word "that," the same

being the first word in line 7 from the top of page 2, and ending with the word "office," the same being the last word of paragraph one, and the last word in line three from the top of page 3, upon the ground and for the reason that the same is impertinent and should be expunged.

2.

For that the allegations in the second paragraph of said bill in equity beginning with the word "that," the same being the first word in line one of said paragraph 2, and ending with the word "possession," the same being the last word in paragraph 2, as follows:

"That pursuant to the authority given by said [41] act, the Commissioner of the General Land Office prescribed and promulgated certain regulations to give effect to the provisions of said act, among others, the following:

"That after the expiration of the 60 days' publication, the person desiring to purchase the land described in his application to purchase should, under oath, make answer to certain questions as follows:

'Have you sold or transferred your claims to this land since making your sworn statement, or have you directly or indirectly made any agreement or contract in any way or manner, with any person whomsoever, by which the title which you may acquire from the Government of the United States, may inure, in whole or in part to the benefit of any person except yourself?'

And

'Do you make this entry in good faith for the appropriation of the land exclusively to your

own use and not for the use or benefit of any other person?’

And

‘Has any other person than yourself, or has any firm, corporation, or association, any interest in the entry you are now making, or in the land, or in the timber thereon?’

Also the following:

‘Did you pay, out of your own individual funds, all the expenses in connection with making this filing, and do you expect to pay for the land with your own money?’

And

‘Where did you get the money with which to pay for this land and how long have you had the same in your actual possession?’ ”

upon the ground and for the reason that the same is impertinent, and should be expunged.

3.

For that the allegations in paragraph five of said bill in equity beginning with the word “that,” the same being the first word in line one from the top of page 8, and ending with the word “them,” the same being [42] the last word in line three from the top of page 10, and the last word in paragraph 5, upon the ground that the same is impertinent, and should be expunged.

4.

For that the allegations in the 8th paragraph of said Bill in Equity, beginning with the word “that,” the same being the first word in line one of paragraph eight, and ending with the word “title,” the same be-

ing the last word in paragraph 8, and the last word in line two from the top of page 14, upon the ground that the same is impertinent, and should be expunged.

5.

For that the allegations contained in said Bill beginning with the word "and," the same being the second word in line 4 from the top of the last page of said Bill, and ending with the word "charged," the same being the fifth word in the 8th line of the last page of said Bill, as follows:

"And the said defendants, and each of them be held to pay to the Treasurer of complainant, all such reasonable sums of money as it may have found necessary to lay out and expend in and about discovering and establishing the fraud as is hereinbefore set forth, and charged,"

upon the ground and for the reason that the same is impertinent and should be expunged.

GEO. W. TANNAHILL,

Solicitor for Defendants, William F. Kettenbach,
George H. Kester, and William Dwyer, Residing
at Lewiston, Idaho.

State of Idaho,

County of Nez Perce,—ss.

Geo. W. Tannahill, being duly sworn, upon oath says that he is the solicitor for the defendants named in the foregoing exception, that said exception is proposed in good faith, and not for the purpose of delay, [43] and is, as affiant verily believes, well founded in point of law.

GEO. W. TANNAHILL.

Subscribed and sworn to before me this 29th day of October, A. D. 1909.

[N. P. Seal] SAMUEL O. TANNAHILL,
Notary Public in and for Nez Perce County, State of
Idaho.

[Endorsed]: Filed November 30th, 1909. A. L.
Richardson, Clerk. [44]

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

No. 407.

THE UNITED STATES OF AMERICA,
Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H.
KESTER, WILLIAM DWYER,
Defendants.

Opinion on Exceptions and Demurrer to Bill.

PEYTON GORDON, Esq., Special Assistant to
the Attorney General, Solicitor for Com-
plainant.

GEORGE W. TANNAHILL, Esq., Solicitor
for Defendants.

DIETRICH, District Judge:

The parties in this case are practically the same as the parties in No. 388, and, in all substantial respects, the bills are similar. The demurrer interposed by the defendants presents no question not passed upon in ruling upon the demurrer in that case.

There was also filed in this case a motion to strike out certain paragraphs, similar in form to the motion

considered in No. 388, and a similar application has been made by counsel for the defendants to substitute exceptions. Considering the motion as being in the nature of exceptions to the bill, it is much narrower in its scope than the exceptions considered in No. 388, and it is therefore controlled by the principles applied in that case. [45]

Let an order be entered permitting the filing of the formal exceptions, and allowing the exceptions as to paragraphs two and five of the bill, and denying them as to other portions thereof; also overruling the demurrer, and granting to the defendants thirty days in which to answer.

Dated this 30th day of November, 1909.

FRANK S. DIETRICH,
Judge.

[Endorsed]: Filed November 30th, 1909. A. L. Richardson, Clerk. [46]

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

No. 407.

THE UNITED STATES

vs.

WILLIAM F. KETTENBACH et al.

**Order [on Exceptions to Bill, and Overruling
Demurrer Thereto].**

On this day was announced the decision of the Court upon the exceptions to the bill of complaint herein and upon the demurrer thereto heretofore

argued and submitted, which decision is in writing and on file in said cause, and it is ordered that the formal exceptions presented in said cause be filed, and that the same be allowed as to paragraphs two and five of said bill and denied as to the other portions thereof. It is further ordered that the demurrer to said bill of complaint be and the same is hereby overruled, and the defendants are given thirty days from this date to answer in said cause.

Dated Nov. 29, 1909. [47]

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

No. 407.

THE UNITED STATES

vs.

WILLIAM F. KETTENBACH et al.

**Order [Allowing Defendants Five Days Additional
to Answer].**

On motion of Geo. W. Tannahill, Esq., solicitor for defendants, it is ordered that said defendants be given five days additional to the time fixed to answer herein.

Date Dec. 21, 1909. [48]

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

THE UNITED STATES OF AMERICA,
Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H.
KESTER and WILLIAM DWYER,
Defendants.

Disclaimer [of William Dwyer].

The defendant, William Dwyer, now and at all times herein saving and reserving to himself all manner of benefit and advantages of exception to the many errors and insufficiencies in the complainant's bill in equity contained, says that he does not know that he, this defendant, to his knowledge or belief, ever had, or did he claim or pretend to have, nor does he now claim, any right title or interest of, in, or to the estate and premises situate in the county of Nez Perce, State of Idaho, and in complainant's bill in equity set forth, or any part thereof, and this defendant does disclaim all right, title and interest to the said estate and premises in said complainant's bill in equity mentioned, and every part thereof; and this defendant denies all unlawful combination, agreement, conspiracy and confederacy in the said bill in equity charged, without that any other matter or thing material or necessary for this defendant to make answer unto and not herein and hereby well or sufficiently answered unto, confessed or avoided, traversed or denied, is true to the knowledge or belief

of this defendant, all which matters and things this defendant is ready to aver, maintain and prove, as this Honorable Court may direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully [49] sustained.

WILLIAM DWYER,
Defendant.

GEO. W. TANNAHILL,
Solicitor for Defendant, Residing at Lewiston,
Idaho.

State of Idaho,
County of Nez Perce,—ss.

William Dwyer, being duly sworn, says:

That he has read the foregoing disclaimer, subscribed by him and knows the contents thereof, and that the same is true of his own knowledge, except as to matters which are therein stated to be on his information or belief, and as to those matters that he believes it to be true.

WILLIAM DWYER.

Subscribed and sworn to before me this 31st day of December, 1909.

[N. P. Seal] SAMUEL O. TANNAHILL,
Notary Public in and for Nez Perce County, State of
Idaho.

[Endorsed]: Filed January 5, 1910. A. L. Richardson, Clerk. [50]

[Joint and Several Answers of William F. Kettenbach, George H. Kester and William Dwyer.]

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

THE UNITED STATES OF AMERICA,
Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H.
KESTER and WILLIAM DWYER,
Defendants.

ANSWER TO BILL IN EQUITY.

To the Honorable, the Judges of the Circuit Court of
the United States for the District of Idaho:

The joint and several answers of William F. Kettenbach, George H. Kester and William Dwyer, defendants, to the Bill in Equity of the United States of America, complainant, respectfully states:

These defendants, now and at all times hereafter saving and reserving to themselves all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's said bill in equity contained, for answer thereto, or to so much or such parts thereof as these defendants are advised is material for them to make answer unto, answer and say:

1.

These defendants, and each thereof, deny that heretofore, to wit, on the first day of July, in the year 1902, or upon any other date, or at divers other times before or after that day, or before the making of the

several entries in complainant's bill in equity mentioned [51] or designated, in the State of Idaho, William F. Kettenbach, George H. Kester or William Dwyer, or either thereof, who are in complainant's bill in equity or in the caption of said bill named as defendants, did unlawfully or corruptly combine, conspire, confederate or agree together, or with each other, or with divers other persons, some of whom are in complainant's bill in equity named, or others of whom are to the complainant unknown, or did form, make, or enter into an unlawful, corrupt or fraudulent conspiracy, combination or agreement with each other, or with the other persons aforesaid, for the purpose or to the end of defrauding the complainant of the title or ownership of divers large tracts of public land then owned by the complainant, or lying in the district of public lands subject to entry at the land office of the United States, located at Lewiston, in the State of Idaho, or for the purpose or to the end of defrauding the complainant out of the use, occupation or possession of the said tracts of public land; or for the purpose or to the end of defrauding the United States by acquiring from the United States through or by means of the act of Congress approved on June 3, 1878, mentioned in complainant's said bill in equity, for themselves or for each of themselves, the title to large bodies of timber lands, then being public lands or the property of the United States, in area or to an amount much greater than the area and the amount which they, the said defendants, individually or collectively could lawfully or in accordance with the provisions of the said statute, acquire; or for the purpose or to the end of

defrauding the United States by causing or procuring divers or many others persons severally to make entry of or to purchase from the United States, under or in professed [52] accordance with the provisions of the said statute, divers or many tracts of the public land, then being the property of the United States, they, the said defendants, then or there, intending or designing afterwards to acquire from the said other persons, the said lands so to be entered or purchased by the said other persons, or intending or designing to cause or procure the said lands to be entered or purchased in the interest or for the ultimate benefit or advantage of themselves, the said defendants, whereby, or in or by which procurement with the intent aforesaid, the provisions of the said statute should be abused or perverted, or the true intent or purpose of the said statute should be defeated; or for the purpose of accomplishing the said ends or of defrauding the United States by divers fraudulent or unlawful means, that is to say, by means of false, fraudulent or unlawful entries to be made of the aforesaid tracts of public land at the land office aforesaid, or by means of perjury, the subornation of perjury, the procurement of false swearing, or by means of other falsehoods, false pretenses or misrepresentations, whereby the officers of the United States should be deceived or imposed upon or should be induced or procured to divest the United States of its title to the said lands or to convey the said title of the United States to divers persons not lawfully entitled thereto contrary to the laws of the United States, or for the benefit, ad-

vantage or profit of the said defendants.

2.

These defendants, and each thereof, deny that as a part of the said conspiracy or agreement so far as aforesaid made or entered into by the said defendants, in the said bill in equity named, or as a part of the said unlawful [53] or fraudulent means whereby the said unlawful purposes of the said conspiracy were to be effected, it was at the times or place aforesaid, by the said defendants mutually agreed, designed or contemplated that they, the said defendants, should persuade, employ or otherwise induce or procure a large number of other persons severally to purchase or to make entries of divers tracts of the public lands aforesaid under or in pretended or apparent accordance with the aforesaid act of Congress approved June 3, 1878, as amended by the act of Congress approved on August 4, 1892, or that before the said other persons should file the sworn statements by that statute prescribed, or should apply to enter or purchase such lands or should otherwise take any steps or initiate any proceedings to that end, or before the making of such entries or purchases, or as a means of persuading or inducing the said other persons to make such entries or purchases, the said defendants should make or enter into certain agreements, contracts or understandings with the said other persons, severally, whereby or by the terms of which agreements, contracts or understandings, the said defendants, or some of them, should agree or contract to buy of the said other persons, severally, or the said other per-

sons severally should agree or contract to sell to the said defendants, or some of them, the respective tracts so to be entered or purchased by the said other persons when or so soon as the said other persons should obtain from the United States the titles to the said tracts by them to be entered or purchased, or shortly thereafter; or that thereupon or after the making of such unlawful contracts or agreements, or while the same should subsist or continue, the said defendants should cause or procure the [54] said other persons severally to apply at the land office aforesaid to make entries or to purchase divers tracts of the said public lands in professed accordance with the statutes aforesaid, or should cause or procure each of the said persons so applying, at the time of making his application to enter, or in connection with or as a part of such application, to execute, sign, make oath to or file in the said land office a sworn statement of the character, substance, tenor or purport prescribed by the said act of Congress approved on June 3, 1878, which act is in said bill in equity mentioned, stated or in part recited, in which statement such applicant should declare or on his oath represent, among other things, that he, the said applicant, did not apply to purchase the land by him applied for on speculation, but in good faith to appropriate the same to his own exclusive use or benefit, or that he had not, directly or indirectly made any agreement or contract, in any way or manner, with any person or persons whatsoever, by which the title which he might acquire from the Government of the United States should inure, in whole or in part, to

the benefit of any person except himself, the said defendants intending, designing or contemplating that each of the said other persons so to be induced to make such applications or to file such sworn statements should in doing so commit or be guilty of wilful or corrupt perjury, or should swear falsely or corruptly, or should defraud the United States or fraudulently deceive or impose upon the officers of the said land office or upon the other officers of the United States charged with the administration of the laws regulating the disposal of the public lands, inasmuch or because [55] in truth or in fact each of the said persons so to be induced to make such application should, before the making of his said application or the filing of his said sworn statement, as the said defendants intended or contemplated, have made with the said defendants or some of them the agreement or contract aforesaid, by the terms of which such persons so to make application should have agreed to sell to the defendants or to some of them, or the defendants or some of them should have agreed to buy the land or the title which such person should acquire from the United States by means of the application or entry by him to be made.

3.

These defendants, and each thereof, deny that as a further part of the said alleged conspiracy or alleged agreement so as stated and pleaded in complainant's bill in equity, or entered into by the said defendants hereinbefore named, or as a further part of the unlawful means whereby the said unlawful purposes of the said conspiracy were to be effected,

it was at the times or the places aforesaid, by the said defendants, mutually agreed, designated or contemplated that they, the said defendants, after having procured the other persons in said bill in equity mentioned, to make applications to enter the lands hereinbefore mentioned in the manner or under the circumstances aforesaid, should furnish or advance to each of the said persons so much money as should be necessary to enable such person to pay to the proper officers of the United States the amount of money prescribed by law to be paid upon the making of the entry by such person to be made, or that the sum so by the defendants advanced should be deducted from the amount agreed to be paid by [56] them to such person as the purchase price of the land by him entered, or it was further intended or contemplated by the said defendants that they should cause and procure each of the said other persons, who were to be induced to make entries as aforesaid, when such person should appear before the proper officers of the aforesaid land office to answer the interrogatories that he, the said person then applying to make entry, had paid out of his own individual funds all the expenses in connection with the filing by him made; or that he expected to pay for the land by him sought to be entered with his own money; or that the money with which he intended to pay for the said land was derived by him from other sources than the defendants, or that he had had the said money in his actual possession for a longer period than in fact he had so had the same; the said defendants mutually intending, designing or contemplating

that each of the said other persons, so to be caused and procured so to answer the said interrogatories, should in doing so commit or be guilty of wilful or corrupt false swearing, or should swear falsely or corruptly or should defraud the United States, or should fraudulently deceive or impose upon the officers of the United States concerned with the administration of the laws regulating the disposal of the public lands, inasmuch or because in truth or in fact each of the said persons so to be caused or procured to answer the said interrogatories in the manner or to the effect aforesaid should, as the said defendants intended or contemplated, before the making of such answers, have received from the said defendants or from some of them the money by him to be used in the purchase of the land sought by him to be entered, or should not pay [57] or intend or expect to pay for the said land out of his own individual funds or with his own money, or should not pay or intend or expect to pay the expenses of his filing or entry out of such funds or money, or should, moreover, swear falsely and fraudulently in respect of other matters the subject of such interrogatories.

4.

These defendants, and each thereof, deny that thereafter, that is to say, after the formation or making of the said alleged unlawful conspiracy so as aforesaid made or entered into by the said defendants hereinbefore named, or at divers times in the State of Idaho, in pursuance or execution of the said alleged conspiracy or for the purpose of effecting the said unlawful purpose thereof, the said de-

fendants, or some of them, did make or enter into fraudulent, corrupt, or unlawful contracts, agreements, arrangements or understandings with a large number of persons, severally, that is to say, with Charles E. Loney, Mary A. Loney, James T. Jolly, Effie A. Jolly, Clinton E. Perkins, Frank J. Bonney, Charles S. Meyers and Jannie Meyers, or either thereof, or severally, or with divers other persons who are to the complainant unknown, but whose names, when the same shall be discovered, the complainant prays leave to add to its bill in equity by proper amendment, and to seek appropriate relief in respect of the lands by them fraudulently obtained from the complainant; or that in or by said unlawful contracts, agreements, arrangements or understandings so as aforesaid made by the said defendants with the said other persons, each of the said other persons severally agreed or arranged with the said defendants or with some [58] of them that he or she would make an entry or purchase of a tract of the public land of the United States under or in pretended or apparent accordance with the aforesaid act of Congress approved on June 3, 1878, as amended on August 4, 1892, or would, upon obtaining title to the said tract from the United States, convey the said title or tract to the defendants or to some of them; or the said defendants, or some of them, acting for all, agreed, contracted or arranged that they would pay each of the said other persons a certain sum of money for the tract of land by him or her so to be entered, or by way of recompense to such person for his or her costs.

labor or trouble incurred in acquiring title to the said tract from the United States; or that the said defendants further agreed or promised to furnish or advance to each of the said other persons so much as might be necessary to enable him or her to pay for such land or to defray the other expenses incident to the obtaining of title to such land from the United States.

5.

These defendants, and each thereof, deny that thereupon or at all, that is to say, at divers times after the making by the said defendants as aforesaid of the unlawful, corrupt, or fraudulent agreements, contracts, arrangements or understandings with the said Charles E. Loney, Mary A. Loney, James T. Jolly, Effie A. Jolly, Clinton E. Perkins, Frank J. Bonney, Charles S. Meyers or Jannie Meyers, or either thereof, named in paragraph seven of complainant's bill in equity, the said defendants, in pursuance or execution of the aforesaid unlawful or fraudulent conspiracy, or to effect the aforesaid unlawful purposes thereof, or in accordance with or in pursuance of the mode, scheme, method or means, set out and stated in complainant's said bill in equity to have been by them mutually agreed upon, designed or [59] contemplated, or in pursuance of or in accordance with the said unlawful, corrupt or fraudulent agreement, stated in said paragraph of said complainant's bill in equity to have been made and entered into by or between the said defendants or the said other persons, named in the said paragraph, did, at divers times, unlawfully, cor-

ruptly or fraudulently cause, induce, or procure the said Charles E. Loney, Mary A. Loney, James T. Jolly, Effie A. Jolly, Clinton E. Perkins, Frank J. Bonney, Charles S. Meyers or Jannie Meyers, or either thereof, severally or at all, to apply at the said land office of the United States located at Lewiston, in the State of Idaho, to purchase a tract of public land, then the property of the complainant, under the provisions of the aforesaid act of Congress, approved on June 3, 1878, as amended by the act of Congress, approved on August 4, 1892, or in pretended or apparent accordance with the provisions or requirements of the said acts, the said defendants then or at all times thereafter well knowing that the said applications so made by the said other persons, or the entries so by the said other persons sought or intended to be made, were or would be false, fraudulent, illegal or invalid by reason of the fact stated in the said bill in equity, that each of the said applications was made or each of the said entries was sought or intended to be made in accordance with or in pursuance of an unlawful, corrupt or fraudulent agreement, theretofore, as aforesaid, made, or then or thereafter subsisting, whereby the person so applying or seeking to enter each tract had agreed to sell to the said defendants such tract upon the acquisition by him from the United States of title thereto, or the said defendants had agreed to buy the said tract or the said title. [60]

6.

These defendants, and each thereof, deny each and every allegation set forth in paragraph nine of

said bill in equity, and especially that portion thereof beginning with the word "and," the same being the first word of said paragraph nine, and ending with the word "Office," the same being the last word in said paragraph nine, and these defendants, and each thereof, deny that any unlawful, corrupt or fraudulent agreements were ever made with either of the parties therein mentioned, set out and described, or that any conspiracy was ever entered into with the said entrymen whose names are set out and described in paragraph nine of complainant's bill in equity, or at all, and deny each and every allegation contained in said paragraph nine.

7.

These defendants, and each thereof, deny each and every allegation contained in paragraph ten of the said bill in equity, and especially that portion thereof beginning with the word "and," the same being the first word in said paragraph ten, and ending with the word "entered," the same being the last word in paragraph ten, and these defendants, and each thereof, deny that any unlawful, fraudulent, or corrupt conspiracy was ever entered into or made, or any unlawful, fraudulent or corrupt agreement was ever entered into or made between themselves and the said entrymen referred to in said paragraph ten, or otherwise, at all, and deny that any of the said officers of the United States Land Office were ever misled by any misrepresentations of these defendants. or either thereof, and deny that any false or fraudulent representations were ever made to the officers of the United States Land Office by these

[61] defendants, or either thereof.

8.

These defendants, and each thereof, deny each and every allegation contained in paragraph eleven of complainant's bill in equity, and especially that portion thereof beginning with the word "that," the same being the first word in paragraph eleven, and ending with the word "United States," the same being the last word in said paragraph eleven, and these defendants especially deny that there was ever any unlawful or corrupt conspiracy, combination, confederation or agreement entered into between these defendants or with other persons, or at all, and deny that there was ever anything done by these defendants pursuant to any false, corrupt conspiracy, purpose or combination, confederation or agreement, as alleged in said paragraph eleven, or at all, and deny that any or either of these defendants procured any person to answer any questions in substance or to the effect that he or she had not sold or transferred his or her claim, or either thereof, or to make any false answers to any of the questions or interrogatories, or inquiries set out and pleaded in said paragraph eleven.

9.

These defendants, and each thereof, deny all that portion of paragraph twelve, beginning with the word "that," the same being the first word in paragraph twelve, and ending with the word "said," the same being the last word in line fourteen from the top of page eighteen of the said bill in equity, and these defendants, and each thereof, especially deny

that at divers or several times, or at all, they procured Charles E. Loney, or any other person, to make any false, unlawful or corrupt agreement, or that there was any false, [62] unlawful or illegal agreement or arrangement or understanding made with the said Charles E. Loney, or any other person, in respect of said tract of land set out and described in said paragraph twelve, and these defendants, and each thereof admit that the said entrymen made the entries as alleged in said paragraph twelve, but deny that the same were made pursuant to any false, fraudulent, or corrupt agreement, conspiracy, confederation or design.

10.

These defendants, and each thereof, deny that each of said persons so making entry of or obtaining title to the tract by him or her entered, did apply to make or did make such entry, or did prosecute or carry on the proceedings, at the solicitation or instigation of the said defendants, being moved or stimulated thereto by the advice, request or promises of the said defendants hereinbefore named, or therein acting upon, in pursuance of, or in accordance with, the unlawful, corrupt or fraudulent arrangement, agreement, or understanding theretofore made or entered into as aforesaid between him or her or the said defendants, which said agreement, arrangement, or understanding continued or subsisted throughout the whole of the said proceedings, whereby it had been or was agreed that the said defendants should buy from each of the said persons, or each of the said persons should sell or convey to

the said defendants, the tract or the title by him or her to be acquired from the United States.

11.

These defendants and each thereof deny each and every allegation of paragraph fourteen of complainant's [63] bill in equity, and especially all that portion thereof beginning with the word "and," the same being the first word in paragraph fourteen, and ending with the word "deceitful," the same being the last word in said paragraph fourteen, and these defendants, and each thereof, deny that they, or either thereof, induced either or any of said parties to swear falsely concerning the said transactions in the land office, and deny that either of said entrymen did swear falsely concerning his or her application to make entry, or concerning his or her said application to make final proof of or for the said tract of land, and deny that there was ever any contract, agreement, or understanding, either directly or indirectly, whereby the title to said tract of land should inure in whole or in part to the benefit of either of these defendants, after the same was acquired by the various entrymen.

12.

These defendants, and each thereof, deny each and every allegation contained in paragraph fifteen of the said bill in equity, and especially that portion thereof beginning with the word "and," the same being the first word in paragraph fifteen, and ending with the word "fraudulent," the same being the last word in paragraph fifteen, and these defendants, and each thereof, especially deny that either of said

entrymen made false answers to any of the interrogatories set out and referred to in said paragraph fifteen, or that these defendants, or either thereof, procured the said entrymen to make false answers to any of the interrogatories referred to therein, or at all, and these defendants deny that any agreement, understanding, or combination was ever entered [64] into with either of said entrymen, as alleged in said paragraph fifteen, or at all.

13.

These defendants, and each thereof, deny each and every allegation contained in paragraph sixteen, and especially that portion of paragraph sixteen beginning with the word "and," the same being the first word in said paragraph sixteen, and ending with the word "prevented," the same being the last word in said paragraph sixteen, and these answering defendants, and each thereof, especially deny that before either of said entrymen appeared before the land office to make proof required by statute, or to answer the interrogatories set out in complainant's bill in equity, received or accepted any sums of money for any purpose whatever, or that there was ever any understanding or agreement between the said entrymen and these defendants, or either thereof, that any sum of money should be furnished by the said defendants for the purpose of paying the purchase price of said land, or at all, and deny that there was any understanding, combination, agreement or confederation between the said entrymen and these defendants, or either thereof, whereby a purchase of said lands should be made after final

proof thereof, or after title had been acquired from the Government of the United States, and these answering defendants, and each thereof, deny that the complainant has been defrauded by the deceitful representations made by the said persons seeking to make entries of the said lands, or that the officers of the United States concerned in the proceeding were deceived or imposed upon, and deny that any fraudulent, false or deceitful representations were made by these defendants, or either thereof. [65]

14.

These answering defendants, and each thereof, deny each and all of the allegations contained in paragraph seventeen of complainant's bill in equity, and especially that portion thereof beginning with the word "and," the same being the first word in said paragraph seventeen, and ending with the word "United States," the same being the last word in said paragraph seventeen, and these defendants, and each thereof, especially deny that any unlawful conspiracy was ever made or entered into among the said defendants herein named, or the said entrymen, or either thereof, or that the officers of the United States were deceived, or the United States defrauded out of any of its timber or its lands, or that there were any misrepresentations or impositions in violation of law, or otherwise, as alleged in said paragraph seventeen of complainant's said bill in equity, or at all.

15.

These answering defendants deny each and every allegation contained in paragraph eighteen of com-

plainant's bill in equity, and especially that portion thereof beginning with the word "and," the same being the first word in said paragraph eighteen, and ending with the word "held," the same being the last word in paragraph eighteen, and these defendants and each thereof deny that there was ever any false, unlawful, corrupt or fraudulent schemes or practices, made or entered into by these defendants with the said entrymen, in the said bill in equity named, or either thereof, or that the United States was ever defrauded of any of its timber lands, either valuable or otherwise, or that said patents were procured unlawfully, or fraudulently, or are illegal, or are invalid or voidable as against the complainant, or contrary to equity or good [66] conscience, and these defendants, and each thereof deny that the complainant has any right or authority, or in equity is entitled to have the said patents or titles set aside, or vacated, or voided, or for naught held.

16.

These answering defendants, and each thereof, deny that pursuant to said or any unlawful or corrupt combination, confederacy or agreement, alleged and set forth in said bill in equity, or to effect the object or purpose thereof, the said William F. Kettenbach, George H. Kester, or William Dwyer did induce the said several other persons named in complainant's bill in equity in connection with the description of the said several tracts of land, to convey the same, in some instances to George H. Kester, in some instances to George H. Kester and William F. Kettenbach, or George H. Kester and W. F. Ket-

tenbach, or that in each or every instance such conveyances were executed for the benefit of the said defendants, William F. Kettenbach, George H. Kester, or William Dwyer, or either or all of them, or other person or persons unknown to the complainant, pursuant to the unlawful or any agreement in complainant's bill in equity alleged, or that by means of such conveyances from the said several other persons to whom the patents of the United States were issued, the several titles purporting to be issued by the United States, or conveyed to the said patentees, are now vested in certain of the said defendants, William F. Kettenbach, George H. Kester or William Dwyer, but admit that title to the said tracts of land set out and described in complainant's bill in equity is vested either in William [67] F. Kettenbach or George H. Kester, and allege that the same was purchased for value, and the purchase price paid, in due course of business, without fraud or deception, or without any corrupt or fraudulent agreement on the part of these defendants, or either thereof, and deny that the defendant, William Dwyer, has, or owns, or claims, any interest in or to the said tracts of land, or either thereof.

For a further, separate and second defense, these defendants allege:

1.

That the entrymen, Mary A. Loney, Charles E. Loney, James T. Jolly, Effie A. Jolly, Clinton E. Perkins, Frank J. Bonney, Charles S. Meyers and Jannie Meyers, were at the time of the making of their sev-

eral entries, set out and pleaded in paragraph twelve of complainant's bill in equity, citizens of the United States of America, and residents, citizens, and inhabitants of the State of Idaho, and competent to make their several Timber and Stone entries of the tracts of land involved herein and set out and specifically described in said paragraph twelve of complainant's bill in equity, on file herein.

2.

That the several entrymen herein last above referred to, upon the various dates of making their said Timber and Stone entries, to wit:

Charles E. Loney, April 3, 1906; Mary A. Loney on March 23, 1906; Frank J. Bonney on June 30, 1906; James T. Jolly on April 3, 1906; Effie A. Jolly on March 23, 1906; Charles S. Meyers on September 30, 1905; Jannie Meyers on March 19, 1906, and Clinton E. [68] Perkins on April 18, 1906, made application and filed their sworn statements for said tracts of land described therein, in good faith, for the purpose of acquiring the said land strictly in accordance with the laws of the United States, and not in violation of any part or portion thereof, either directly or indirectly, and at the time of making the said entries and filing their said sworn statements, had no contract or agreement with any person whatsoever wherein or whereby the title which they might acquire from the Government of the United States would inure in whole or in part to the benefit of any other person except themselves.

3.

That long subsequent to the time the said entrymen

made their final proof and received their certificates from the Receiver of the United States Land Office at Lewiston, Idaho, these defendants, in good faith, and for a valuable consideration, and in due course of business, purchased the said tracts of land from the said various entrymen, and paid the purchase price therefor, and received the entrymen's deed for the said tracts of land, without any notice that any contract or agreement existed between the said entrymen and any person whatsoever.

4.

That the purchase of the said various tracts was made, and the deeds thereto executed, upon the following dates, to wit:

Charles E. Loney, July 11, 1906; Mary A. Loney, February 28, 1907; Frank J. Bonney, December 20, 1906; James T. Jolly, July 11, 1906; Effie A. Jolly, February 28, 1907; Charles S. Meyers, March 21, 1906; Jannie [69] Meyers, July 11, 1906, and Clinton E. Perkins, September 4, 1906, and that the said deeds were placed of record in the office of the County Recorder of Nez Perce County, Idaho.

5.

That the defendants, George H. Kester and William F. Kettenbach made the purchase of said tracts of land, and each and every part thereof, and the defendant, William Dwyer, had and never has had any interest in or to the said tracts of land, or any part thereof, and that the said defendants, George H. Kester and William F. Kettenbach, have never transferred or conveyed the said tracts of land, or any part thereof, to any person.

THIRD.

For a further, separate and third defense, these defendants, and each thereof, allege:

1.

That the perjury, subornation of perjury and conspiracy alleged and pleaded in complainant's bill in equity, are barred by the provisions of section 1043 and 1044, Revised Statutes of the United States of America.

2.

These defendants deny all unlawful combination, confederacy or conspiracy in the said bill charged without that any other matter or thing material or necessary for these defendants to make answer unto, and not herein and hereby well or sufficiently answered unto, confessed or avoided, traversed or denied, is true to the knowledge or belief of these defendants, all which matters and [70] things these defendants are ready to aver, maintain and prove, as this Honorable Court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

WILLIAM F. KETTENBACH,
GEORGE H. KESTER,
WILLIAM DWYER,

Defendants.

GEO. W. TANNAHILL,
Solicitor for Defendants, Residing at Lewiston,
Idaho.

State of Idaho,
County of Nez Perce,—ss.

William F. Kettenbach, George H. Kester and William Dwyer, being duly sworn, depose and say:

That they have read the foregoing answer subscribed by them, and know the contents thereof, and that the same is true of their own knowledge, except as to matters which are therein stated to be on their information or belief, and as to those matters they believe it to be true.

WILLIAM F. KETTENBACH.

GEORGE H. KESTER.

WILLIAM DWYER.

Subscribed and sworn to before me this 31st day of December, 1909.

[N. P. Seal] SAMUEL O. TANNAHILL,
Notary Public in and for Nez Perce County, State of Idaho.

[Endorsed]: Filed January 5, 1910. A. L. Richardson, Clerk. [71]

[**Affidavit of Service of Answer and Disclaimer.**]

In the Circuit Court of the United States for the District of Idaho, Northern Division.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H. KESTER, WILLIAM DWYER, CLARENCE W. ROBNETT, and FRANK W. KETTENBACH,

Defendants.

AFFIDAVIT OF SERVICE OF ANSWER AND
DISCLAIMER TO AMENDED BILL IN
EQUITY.THE UNITED STATES OF AMERICA,
Complainant,
vs.WILLIAM F. KETTENBACH, GEORGE H.
KESTER and WILLIAM DWYER,
Defendants.AFFIDAVIT OF SERVICE OF ANSWER AND
DISCLAIMER TO BILL IN EQUITY.State of Idaho,
County of Nez Perce,—ss.

Geo. W. Tannahill, being duly sworn, deposes and says that he is an attorney at law and is the attorney of record for the above-named defendants in the above-entitled cause;

That he resides in the city of Lewiston, County of Nez Perce, State of Idaho; that Peyton Gordon is the assistant to the Attorney General of the United States, and attorney of record for the above-named plaintiff in each of the said causes of action; that the said Peyton Gordon resides in the City of Boise, County of Ada, State of Idaho;

That in each of said places there is a United States postoffice and between the two said places there is a regular communication by mail; [72]

That on the 31st day of December, A. D. 1909, deponent served a true copy of the Answer and Disclaimer to Amended Bill in Equity in the case of United States of America, Complainant, vs. William

F. Kettenbach, George H. Kester, William Dwyer, Clarence W. Robnett and Frank W. Kettenbach defendants, and a true copy of the Answer and Disclaimer to Bill in Equity in the case of United States of America, Complainant, vs. William F. Kettenbach, George H. Kester, and William Dwyer on the said Peyton Gordon, the said attorney of record of said complainant, by depositing said copies of said Answers and Disclaimers in the United States post-office at the city of Lewiston, County of Nez Perce, State of Idaho, properly enclosed in an envelope addressed to Peyton Gordon, Special Assistant to the Attorney General at the City of Boise, County of Ada, State of Idaho, his said place of residence, and prepaying the postage thereupon.

GEO. W. TANNAHILL.

Subscribed and sworn to before me this 31st day of December, A. D. 1909.

[N. P. Seal] SAMUEL O. TANNAHILL,
Notary Public in and for Nez Perce County, State of Idaho.

[Endorsed]: No. 407. Filed January 5th, 1910.
A. L. Richardson, Clerk. [73]

In the Circuit Court of the United States for the District of Idaho, Northern Division.

IN EQUITY—No. 407.

THE UNITED STATES OF AMERICA,
Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H.
KESTER and WILLIAM DWYER,
Defendants.

Replication to Answer.

Replication of complainant, in the above-entitled cause, to the answer of William K. Kettenbach, George H. Kester and William Dwyer, defendants.

This replicant, saving and reserving to itself all advantage of exception to the manifold insufficiencies, errors and uncertainties of the answer of the said defendants, William F. Kettenbach, George H. Kester, and William Dwyer, for replication thereto, says: That it will aver, maintain and prove its said bill of complaint to be true and sufficient, and that the said answer of the said defendants, William F. Kettenbach, George H. Kester and William Dwyer is untrue, evasive and insufficient; wherefore, it prays relief as in its said bill set forth.

PEYTON GORDON,
Special Ass't to the Att'y General,
Solicitor for Complainant.

[Endorsed]: Filed February 7th, 1910. A. L. Richardson, Clerk. [74]

In the Circuit Court of the United States for the District of Idaho, Northern Division.

IN EQUITY—No. 407.

THE UNITED STATES OF AMERICA,
Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H.
KESTER and WILLIAM DWYER,
Defendants.

Replication to Answer and Disclaimer.

Replication of complainant, in the above-entitled cause, to the answer and disclaimer of William Dwyer, defendant.

This replicant, saving and reserving all advantage of exception to the manifold insufficiencies of said answer and disclaimer of the said defendant, William Dwyer for replication thereto, saith: That it will ever aver, maintain and prove its said bill to be true and sufficient in law, and that said answer and disclaimer is untrue and insufficient; wherefore, replicant prays relief as in said bill of complaint set forth.

PEYTON GORDON,
Special Ass't. to the Att'y General,
Solicitor for Complainant.

[Endorsed]: Filed February 7th, 1910. A. L. Richardson, Clerk. [75]

*In the Circuit Court of the United States, Ninth
Judicial Circuit, District of Idaho, Northern
Division.*

IN EQUITY—No. 407.

THE UNITED STATES OF AMERICA,
Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H.
KESTER and WILLIAM DWYER,
Defendants.

Notice of Motion [for Order to Amend Bill].

NOTICE OF MOTION.

To the Above-named Defendants and to Your Attorneys of Record, and to Each of You:

You are hereby notified that the undersigned solicitor for the complainant in the above-entitled cause will, on the 7th day of March, 1910, at Boise City, in the County of Ada, State of Idaho, at the courtrooms of the Circuit Court of the United States for the District of Idaho, in the Federal Building, at the hour of 10:00 o'clock A. M., or as soon thereafter as the counsel can be heard, move the Court for an order to amend the Original Bill of Complaint in the above-entitled cause, by interlineation, as set forth in the motion attached to this notice, and herewith served upon you.

On the hearing of said motion, counsel will use this notice of motion and all the files and records in the above-entitled cause, or so much thereof as may be

necessary for the purpose of said motion.

Dated this 24 day of Feb., 1910.

PEYTON GORDON,
Special Ass't Att'y Gen.,
Solicitor for Complainant. [26]

*In the Circuit Court of the United States, Ninth
Judicial Circuit, District of Idaho, Northern
Division.*

IN EQUITY—No. 407.

THE UNITED STATES OF AMERICA,
Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H.
KESTER and WILLIAM DWYER,
Defendants.

Motion [for Order Permitting Amendment of Bill].

MOTION.

Comes now the United States of America, complainant in the above-entitled cause, by Peyton Gordon, Special Assistant to the Attorney General, its Solicitor, and by direction of George W. Wickersham, Attorney General, moves the Court for an order permitting an amendment to the Original Bill of Complaint, by interlineation, as follows, after the words, "The said complainant respectfully represents to this Court," eleven lines from the bottom of page 1 of the said Bill of Complaint, the following, to wit:

1-A. That at the time of filing this Bill of Complaint, defendants William F. Kettenbach and Will-

iam Dwyer were, and now are, citizens of the United States, residing at Lewiston, in the County of Nez Perce, State and District of Idaho.

That the defendant George H. Kester was, and now is, a citizen of the United States, and resident of Spirit Lake, State of Idaho.

Complainant further prays for an order allowing the amendment of the Original Bill of Complaint in the above-entitled [77] cause, by interlineation, as follows:

By inserting, on the last page of said Bill of Complaint, between the conclusion of the allegations and the signature of George W. Wickersham, the following words:

“May it please your Honors to grant unto the complainant a Writ of Subpoena, issued out of and under the seal of this Honorable Court, directed to the said defendants, William F. Kettenbach, George H. Kester and William Dwyer, commanding them by a day certain, and under a certain penalty therein to be inserted, to be and appear before this Honorable Court, and then and there to answer the premises; and further, to stand to and abide such order and decree therein as shall be agreeable to equity and good conscience.

And your complainant will ever pray.”

PEYTON GORDON,

Special Assistant to the Attorney General,

Solicitor for Complainant.

[Endorsed]: Filed February 24th, 1910. A. L. Richardson, Clerk. [78]

State of Idaho,
County of Ada,—ss.

Peyton Gordon, being first duly sworn, on oath says:

That he is counsel and solicitor for the complainant, the United States, in that certain cause named in the foregoing Notice and Motion; that on the 24 day of February, 1910, he served the foregoing Notice and Motion on George W. Tannahill, counsel and solicitor for defendants named therein, by handing to and leaving with said George W. Tannahill, personally, a true copy of said Notice and Motion, at Boise, Ada County, Idaho.

That the foregoing service includes counsel and solicitors for all parties who have appeared in said cause.

PEYTON GORDON.

Subscribed and sworn to before me this 24th day of Feb., 1910.

A. L. RICHARDSON,
Clerk of the United States Circuit Court. [79]

In the Circuit Court of the United States, Ninth Judicial Circuit for the District of Idaho, Northern Division.

IN EQUITY—No. 407.

THE UNITED STATES OF AMERICA,
Complainant.

vs.

WILLIAM F. KETTENBACH et al.,
Defendants.

Affidavit [in Support of Motion to Amend Bill].**AFFIDAVIT.**

State of Idaho,

County of Ada,—ss.

Peyton Gordon, being first duly sworn, on oath deposes and says: That he is a Special Assistant to the Attorney General of the United States and is solicitor for the complainant in the above-entitled cause, and that he makes this affidavit for and on behalf of the complainant, The United States; that the said complainant being desirous of amending its bill of complaint in the said cause and having filed and served its notice and motion of such amendments according to the rules of this court, further says: That said motion and said proposed amendments are not made for the purpose of vexation or delay, and that the matter contained in said proposed amendments is material and could not with reasonable diligence have been sooner introduced into the said bill.

PEYTON GORDON.

Subscribed and sworn to before me this 8th day of March, A. D. 1910.

A. L. RICHARDSON,
Clerk U. S. Circuit Court. [80]

[Endorsed]: Filed March 8, 1910. A. L. Richardson, Clerk. [81]

*In the Circuit Court of the United States for the
Ninth Judicial Circuit, District of Idaho, North-
ern Division.*

EQUITY—No. 407.

THE UNITED STATES OF AMERICA.

vs.

WM. F. KETTENBACH et al.

**Order [Granting Plaintiff Leave to File Amendment
to Complaint].**

ORDER.

On this day this cause came on to be heard upon the plaintiffs' motion for leave to amend the complaint herein, and it appearing to the Court that due notice was given and served upon counsel for defendants and no appearance having been made or objection filed on that behalf, upon motion of Peyton Gordon, Assistant to the Attorney General, it is ordered that said plaintiff be and is hereby given leave to file amendments to said complaint.

Dated March 8, 1910. [82]

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

No. 407.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H.
KESTER, WILLIAM DWYER,

Defendants.

Amendment to Bill in Equity.

To the Honorable Judges of the Circuit Court of the United States for the District of Idaho:

Now comes the United States of America, the complainant in the above-entitled cause, by George W. Wickersham, the Attorney General of the United State of America, by leave of the Court in that behalf first had and obtained, and makes and files this, the said complainant's Amendments to its Bill of Complaint, in the said cause as follows:

1st. After the words, "The said complainant respectfully represents to this Court," eleven lines from the bottom of page 1 of the said Bill of Complaint, insert the following:

1-A. That at the time of filing this Bill of Complaint, defendants William F. Kettenbach and William Dwyer were, and now are, citizens of the United States, residing at Lewiston, in the county of Nez Perce, State and District of Idaho;

That the defendant George H. Kester was, and now is, a citizen of the United States, and resident of Spirit Lake, State of Idaho. [83]

2d. By inserting on the last page of said Bill of Complaint, between the conclusion of the allegations and the signature of George W. Wickersham, the following words:

"May it please your honors to grant unto the complainant a Writ of Subpoena, issued out of and under the seal of this Honorable Court, directed to the said defendants, William F. Kettenbach, George H. Kester and William Dwyer, commanding them by a day certain, and under a certain penalty therein to

be inserted, to be and appear before this Honorable Court, and then and there to answer the premises; and further, to stand to and abide such order and decree therein as shall be agreeable to equity and good conscience.

And your complainant will ever pray."

GEORGE W. WICKERSHAM,

Attorney General of the United States,

PEYTON GORDON,

Special Assistant to the Attorney General,

Solicitors for Complainant.

[Endorsed]: Filed March 8th, 1910. A. L. Richardson, Clerk. [84]

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

No. 407.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WM. F. KETTENBACH, GEORGE H. KESTER,
WILLIAM DWYER,

Defendants.

Praeipie for Subpoena Ad Respondendum.

PRAECIPE.

A. L. Richardson, Clerk of the Circuit Court of the
United States.

Sir: You will please issue subpoenas ad respondendum in the above-entitled cause, together with certified copies of amendments to bill of complaint filed herein, by leave of the Court, upon Wm. F. Ketten-

4664 *The United States of America*

bach, George H. Kester, William Dwyer.

PEYTON GORDON,

Special Assistant to the Attorney General,

Solicitor for Complainant.

[Endorsed]: Filed March 8, 1910. A. L. Richardson, Clerk. [85]

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

No. 407.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H.

KESTER, and WILLIAM DWYER,

Defendants.

**Application [for Permission] to File Fourth
Defense and Plea in Bar.**

**APPLICATION TO FILE FOURTH DEFENSE
AND PLEA IN BAR.**

Comes now the defendants herein and apply to the above-entitled Court for permission to file their fourth defense and plea in bar herewith presented for filing upon the ground and for the following reasons:

1.

That the said fourth defense and plea in bar is material, relevant, and competent, and is a proper defense to be interposed to the complainant's Bill in Equity on file herein.

2.

That the issues raised by the said fourth defense and plea in bar cannot be tried or determined unless the same are affirmatively pleaded.

This application is made and based upon the complainant's bill in equity on file herein and fourth defense and plea in bar herewith presented for filing and all the files and records in the above-entitled cause.

GEO. W. TANNAHILL,

Solicitor for Defendants, Residing at Lewiston,
Idaho.

State of Idaho,

County of Nez Perce,—ss.

Geo. W. Tannahill, being duly sworn, upon oath says that he is the solicitor for the defendants above named, that the foregoing application is made in good faith and not for purpose of delay, and is as affiant verily believes well founded in point of law.

GEO. W. TANNAHILL. [86]

Subscribed and sworn to before me this 5th day of May, A.D. 1910.

[N. P. Seal]

GEO. E. ERB,

Notary Public in and for Nez Perce County, State of Idaho.

[Endorsed]: Filed May 9, 1910. A. L. Richardson, Clerk. [87]

*In the Circuit Court of the United States in and for
the District of Idaho, Northern Division.*

IN EQUITY—No. 407.

UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H.

KESTER and WILLIAM DWYER,

Defendants.

**Order [Allowing Filing of Fourth Defense and Plea
in Bar, and Overruling Plea].**

ORDER.

Now came the defendants herein and by leave of the Court are allowed to file their fourth defense and plea in bar. Thereupon, by agreement of the solicitors for complainant and defendants, said plea was set down for argument forthwith upon its sufficiency in law to constitute a bar to the part of the bill to which it is addressed, and upon hearing upon the sufficiency of said plea it appearing to the Court that the plea is insufficient in law, it is ordered that the same be, and hereby is, overruled.

Dated May 11, 1910. [88]

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

No. 407.

THE UNITED STATES OF AMERICA,
Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H.
KESTER, WILLIAM DWYER,
Defendants.

Fourth Defense and Plea in Bar.

To the Honorable the Judges of the Circuit Court
of the United States, for the District of Idaho:

Come now the defendants William F. Kettenbach,
George H. Kester and William Dwyer, by leave of
Court first had and obtained, and file this their fur-
ther, separate and fourth defense and plea in bar to
complainant's bill in equity on file herein, and re-
spectfully represent to this Court as follows:

1.

That each and all of the conveyances made by the
various entrymen to the defendants herein have been
conveyed by warranty deeds or by instruments in
writing, by which their title to the said tracts of land
was warranted, and the defendants conveying the
same to the various transferees are liable on their
warranties in case the title fails, and by reason
thereof, in addition to their equity of redemption in
the lands held by Idaho Trust Company, the defend-
ants herein have an interest in all of the land in con-
troversy which has been conveyed by them by reason

of their warranty contained in the deeds, and conveyances made, executed [89] and placed of record, and delivered to the various purchasers.

2.

That heretofore, on the 13th day of July, A. D. 1905, in the United States District Court within and for the Central Division, District of Idaho, in the case of *The United States of America vs. Jackson O'Keefe, William Dwyer, George H. Kester and William F. Kettenbach*, a Grand Jury, then in session, returned an indictment against these defendants, William F. Kettenbach, George H. Kester and William Dwyer, charging conspiracy to defraud the United States in violation of Section 5440, R. S. U. S., in which indictment, and in Count One thereof, the charges against these defendants are in substance, as follows:

“That heretofore, to wit, on the 25th day of April, 1904, at the place aforesaid, Jackson O'Keefe, William Dwyer, George H. Kester and William F. Kettenbach, and other persons to the Grand Jurors unknown, did falsely, unlawfully and wickedly conspire, combine, confederate and agree together among themselves to defraud the United States of the title and possession of large tracts of land situated in the County of Shoshone, and State and District of Idaho, and of great value, of which the following described land is a part, viz.: All that tract or parcel of land described as follows, to wit: Lots One and Two and the East Half of the Northwest Quarter of Section Thirty, Township Thirty-eight,

North of Range Six, East of Boise Meridian, in the County of Shoshone, and State and District of Idaho, by means of false, fraudulent, untrue and illegal entries of said lands under the laws of the United States, the said lands being then and there public lands of the United States open to entry and sale under said laws of the United States at the local land office of the United States at said City of Lewiston in said State and District of Idaho. That according to and in pursuance of said conspiracy, combination, confederation and agreement among themselves had as aforesaid, and to effect the object of said conspiracy, the said Jackson O'Keefe, William Dwyer, George H. Kester and William F. Kettenbach did on said 25th day of April, 1904, at the City of Lewiston in the County of Nez Perce, in the State and District of Idaho, and within the jurisdiction of this court, [90] fraudulently, unlawfully and corruptly persuade and induce one Charles W. Taylor of said District then and there being, to take his corporal oath and be then and there sworn before one J. B. West, who was then and there the duly appointed, qualified and acting Register of the United States Land Office at said City of Lewiston, in said Lewiston Land District, and who was then and there an officer and person having due and competent authority to administer said oath and who did then and there administer said oath to the said Charles W. Taylor. That a certain written affidavit and statement by him, the said Charles W. Taylor,

then and there made, sworn to and subscribed, was true, which said written affidavit and statement then and there subscribed and sworn to by him, the said Charles W. Taylor, at the request and by the procurement of them, the said Jackson O'Keefe, William Dwyer, George H. Kester and William F. Kettenbach, as aforesaid, was then and there in a case in which a law of the United States authorized an oath to be administered and that said written affidavit and statement was then and there required of him, the said Charles W. Taylor, by law, and the rules and regulations of the Interior Department and the General Land Office of the United States, which said written affidavit and statement was then and there that certain written application to the Register of the United States Land Office, at said City of Lewiston, duly made and filed by him, the said Charles W. Taylor, in the United States Land Office at said City of Lewiston, on the 25th day of April, 1904, whereby he, the said Charles W. Taylor, duly applied to the said Register of the said United States Land Office at said City of Lewiston, to enter and purchase under that certain Act of Congress approved June 3, 1878, entitled, 'An Act for the sale of timber lands in the States of California, Oregon, Nevada, and in Washington Territory,' amended by that certain Act of Congress approved August 4, 1893, entitled: 'An Act to authorize the entry of lands chiefly valuable for building stone under the placer mining laws,' the land

hereinbefore described, to wit: Lots One and Two and the East Half of the Northwest Quarter of Section Thirty, Township Thirty-eight North of Range Six, East of Boise Meridian, situate within the District of lands subject to entry and sale under the public land laws of the United States, at the said United States Land Office at Lewiston, Idaho, and which written affidavit and statement sworn to as aforesaid, he, the said Charles W. Taylor, and the said Jackson O'Keefe, William Dwyer, George H. Kester and William F. Kettenbach, and each of them, did then and there know to be false, fraudulent and untrue. * * *

Which indictment was and is numbered 605, and which indictment was then and there on the said 13th day of July, 1905, [91] duly and regularly filed in the above-entitled court and now remains of record therein, and which indictment contains Count One, involving the entry of Charles W. Taylor and the land hereinbefore described, and Count Two thereof contains the same allegations as appear in Count One and hereinbefore pleaded, involving the entry of Edgar H. Dammarell, embracing the northwest quarter of section 19, township 38, north of range 6 E., B. M. Count Three thereof contains the same allegations as appear in Count One and involves the entry of Edgar J. Taylor, embracing lots 3 and 4, and the east half of the southwest quarter of section 18, township 38, north of range 6 E., B. M. The Fourth Count thereof involves the entry of Joseph H. Prentice, and embraces lots 2 and 3 and the east

half of the northwest quarter of section 18, township 38, north of range 6 E., B. M., and which count contains the same allegations as are contained in Count One hereof.

3.

INDICTMENT NO. 607.

That heretofore, on the 13th day of July, A. D. 1905, in the District Court of the United States, within and for the Central Division of the District of Idaho, a Grand Jury duly sworn and empaneled, returned an indictment against the defendants, William Dwyer, George H. Kester and William F. Kettenbach, charging the said defendants with conspiracy to defraud the United States in violation of section 5440, R. S. U. S. consisting of Counts One, Two and Three, which said indictment is No. 607, returned by the Grand Jury and filed by the Clerk of the above-entitled court on the said 13th day of July, [92] 1905, and now appears on file therein, and which indictment is here referred to and made a part hereof as fully as if here set out.

That in Count One of said indictment there appears substantially the same allegations as to conspiracy, fraud, perjury and subornation of perjury as appears in the first count of Indictment No. 605, hereinbefore pleaded, set out and referred to, with the exception that the name of the entryman is Rowland A. Lambdin, and the land involved is described as southwest quarter of section 29, township 42 north of range 1, west of Boise meridian, with other land.

That in Count Two of said Indictment No. 607, there appears substantially the same allegation as in

Count One of Indictment No. 605, except that the name of the entryman is Fred W. Shaeffer, and the land is described as the east half of the northwest quarter and the southwest quarter of the northeast quarter and the northwest quarter of the southeast quarter of section twenty-seven, township 40 north of range 1, west of the Boise meridian, with other land.

That in Count Three of said Indictment No. 607 there appears substantially the same allegation as in Count One of Indictment No. 605, except that the name of the entryman is given as Ivan R. Cornell, and the land involved is described as lots 6 and 7 and the east half of the southwest quarter of section twenty-seven, township 40, north of range 1 west of Boise meridian, with other lands.

4.

INDICTMENT NO. 615.

That in the District Court of the United States, within and for the Northern Division, District of Idaho, on the 6th day of November, 1905, a Grand Jury, duly sworn and [93] empaneled, returned an indictment against the defendants, William F. Kettenbach, George H. Kester and William Dwyer, charging these defendants with conspiracy to defraud the United States in violation of Section 5440, R. S. U. S., which indictment is numbered 615, returned by the Grand Jury and filed by the Clerk of the above-entitled court November 6, 1905, and now remains on file therein, which said indictment is here referred to and made a part hereof as fully as if here set out.

That said indictment contains five counts, the first thereof involving the entry of Edward M. Lewis, and in which count substantially the same allegations are made as in Count One of Indictment No. 605, with the exception that the name of the entryman is different and the land involved is described as the north half of the northeast quarter and the southwest quarter of the northeast quarter of section 19, township 39 north of range 5 east of Boise meridian, with other land.

That in Count Two of said Indictment appears substantially the same allegation as appears in Count One of Indictment No. 605, hereinbefore pleaded, except that the name of the entryman is given as Hiram F. Lewis, and the land involved is described as the northwest quarter of section 20, township 38, north of range 5 east of Boise meridian, with other land.

That in Count Three thereof substantially the same allegations are made as appear in Count One of Indictment No. 605, except that the name of the entryman is given as Charles Carey, and the land involved with other land, is described as north half of northeast quarter, and the north half of the northwest quarter of section 15, township 38 north of range 6 east of Boise meridian. [94]

That in Count Four thereof substantially the same allegations appear as in Count One of Indictment No. 605, except that the name of the entryman is given as Guy L. Wilson, and the land, with other lands, is described as lots 3 and 4, and the northeast quarter of the southwest quarter, and the northwest

quarter of the southeast quarter of section 19, township 39 north of range Five east of Boise meridian.

That in Count Five of said indictment appear substantially the same allegations as in Count One of Indictment No. 605, with the exception that the name of the entryman is given as Frances A. Justice, and the land, with other land, is described as lots 3 and 4, and the east half of the southwest quarter of section 19, township 38 north of range 6 east of Boise meridian.

5.

INDICTMENT NO. 617.

That heretofore, in the United States District Court for the Northern Division, District of Idaho, on the 6th day of November, 1905, a Grand Jury, duly and regularly empaneled and sworn, returned an indictment against the defendant William F. Kettenbach, with William B. Benton and Clarence W. Robnett, charging the defendants with the crime of conspiracy to defraud the United States in violation of section 5440, R. S. U. S., which indictment is numbered 617, returned by the Grand Jury and filed by the Clerk of the above-entitled court on November 6th, 1905, and now appears of record therein, which indictment is here referred to and made a part hereof as fully as if here set out.

That in said indictment appear Counts One, Two and Three, and in each of said counts there appears substantially [95] the same allegation as appears in Count One of Indictment No. 605, except that the name of the entryman in Count One of said Indictment is given as John H. Long, and the land is de-

scribed as lot 2, southwest quarter of the northeast quarter, and the south half of the northwest quarter of section 24, township 39 north of range 3 east of Boise meridian, and in Count Two, the name of the entryman is given as Francis M. Long and the land is described as the north half of the southwest quarter and north half of the southeast quarter of section 13, township 29 north of range 3 east of Boise meridian; and in Count Three the name of the entryman is given as Benjamin F. Long and the land is described as the south half of the northwest quarter and the south half of the northeast quarter of section 13, township 39 north of range 3 E., B. M., together with other lands.

6.

INDICTMENT NO. 618.

That in the District Court of the United States within and for the District of Idaho, Northern Division, on the 6th day of November, 1905, a Grand Jury, duly and regularly empaneled and sworn, returned an indictment against two of the defendants herein, to wit: George H. Kester and William F. Kettenbach, together with Fred Emery and C. W. Colby, charging the said defendants with conspiracy to defraud the United States in violation of section 5440, R. S. U. S., which said indictment is No. 618, returned by the Grand Jury, and filed by the Clerk of the above-entitled court on November 6th, 1905, and now appears on file therein, which indictment is here referred to and made a part hereof, as fully as if here set [96] out.

That said indictment contains Counts One and

Two, and in each of said counts appear substantially the same allegations as appear in Count One of Indictment No. 605, except that the name of the entryman in Count One thereof is given as James C. Evans, and the land is described as the south half of the northwest quarter and the west half of the southwest quarter of section 25, township 39 north of range 3 east of Boise meridian, with other lands, and in Count Two thereof the name of the entryman is designated as Charles Dent and the land is described as the north half of the northeast quarter, and the north half of the northwest quarter of section 14, in township 39 north of range 3 east of Boise meridian, with other lands.

7.

INDICTMENT NO. 635.

That in the United States District Court for the Central Division, District of Idaho, on the 22d day of March, 1907, a Grand Jury duly and regularly empaneled and sworn, returned an indictment against the defendants herein, together with Isham N. Smith, John B. West and Clarence W. Robnett, charging the defendants with conspiracy to defraud the United States in violation of section 5440, R. S. U. S., which said indictment was returned by the Grand Jury and filed by the Clerk of the above-entitled court March 22d, 1907, and which indictment is numbered 635, now appears of record in the above-entitled court, and is made a part hereof as fully as if here set out.

That in said indictment appear substantially the same allegations as appear in Indictment No. 605,

with the exception of the name of the entrymen and the [97] description of the land. The name of the entryman given in Count One thereof is Edward M. Lewis, and the land is described as the north half of the northeast quarter and the southwest quarter of the northeast quarter of section 29, township 39 north of range 5 east of Boise meridian, and in Count Two thereof the name of the entryman is given as Hiram F. Lewis and the land is described as the northwest quarter of section 20, township 38 north of range 5 east of Boise meridian. In Count Three thereof the name of the entryman is given as Charles Carey, and the land is described as the north half of the northeast quarter and the north half of the northwest quarter of section 15, township 38 north of range 6 east of Boise meridian, and in Count Four thereof, the name of the entryman is designated as Guy L. Wilson, and the land is described as lots 3 and 4 and the northeast quarter of the southwest quarter and the northwest quarter of the southeast quarter of section 19, township 39 north of range 5 east of Boise meridian; and in Count Five thereof the name of the entryman is given as Frances A. Justice and the land is described as lots 3 and 4, and the east half of the southwest quarter of section 19, township 38 north of range six east of Boise meridian, with other lands.

8.

INDICTMENT NO. 637.

That heretofore in the United States District Court within and for the Central Division, District of Idaho, a Grand Jury in the above-entitled court,

duly and regularly empaneled and sworn, returned an indictment against the defendants, George H. Kester, William F. Kettenbach and William Dwyer, together with Isham N. [98] Smith, John B. West, Clarence W. Robnett, John Doe and Richard Roe, whose true names are to the Grand Jurors unknown, and divers other persons whose true names are to the Grand Jurors unknown, which said indictment was returned by the Grand Jury and filed by the Clerk of said Court on April 12, 1907, now appears of record therein, and is made a part hereof as fully as if here set out, which said indictment is in one count, and involves the entries of Edward M. Lewis, Hiram F. Lewis, Charles Carey, Guy L. Wilson, Frances A. Justice, Charles W. Taylor, Edgar J. Taylor and divers other persons whose names are alleged to be to the Grand Jurors unknown, and in which appears substantially the same allegation as appears in Count One of Indictment No. 605, and which said indictment herein referred to is No. 637, and embraces the land hereinbefore in said indictments described.

9.

That to each and all of the indictments herein referred to, the defendants entered their pleas of "Not Guilty," issues of fact were joined thereon, and thereafter in the United States District Court for the Northern Division, District of Idaho, at Moscow, in the County of Latah, in said District, on the 17th day of May, A. D. 1907, the defendants herein, William F. Kettenbach, George H. Kester and William Dwyer were tried on said indictment No. 615, re-

turned and filed November 6, 1905, charging the defendants with the crime of conspiracy to defraud the United States in violation of Section 5440, R. S. U. S., in which indictment the same issues were involved as are involved in the above-entitled cause, and in which trial there was used the evidence of [99] Rowland A. Lambdin, Fred W. Shaeffer, Ivan R. Cornell and many of the other entrymen whose claims are involved in the above-entitled cause, and in which an effort is made to have the patents set aside.

10.

That after a trial before the jury in said court and in said cause, the jury returned a verdict of "Not Guilty" upon Counts One, Two and Five of indictment No. 615, which verdict is hereto attached, marked Exhibit "A," and made a part hereof as fully as if here set out, and which was filed June 17, 1907, and now appears of record and on file in the above-entitled court.

11.

That thereafter, on the 31st day of January, 1910, the plaintiff, The United States of America, by and through its proper officers, in the causes of The United States of America, plaintiff, v. William F. Kettenbach, George H. Kester and William Dwyer, Indictment No. 615; and The United States of America v. William Dwyer, George H. Kester and William F. Kettenbach, Indictment No. 607; and The United States of America v. William Dwyer, George H. Kester, William F. Kettenbach and Jackson O'Keefe, No. 605, moved for a consolidation of said

indictments, which motion is now on file in said District Court, within and for the Central Division, District of Idaho, copy of which is attached hereto, marked Exhibit "B," and made a part hereof as fully as if here set out; and thereafter, on the 15th day of February, 1910, the said court made an order consolidated said Indictments No. 615, No. 607 and No. 605; and thereafter the defendants moved to consolidate with Indictments No. 615, No. 607 and No. 605, indictments numbered 617, 618, 635 and [100] 637, herein referred to, in so far as they related to the defendants William F. Kettenbach, George H. Kester and William Dwyer, and that a severance be granted as to the remaining defendants in the several indictments; after which the United States dismissed Indictments Numbered 617 and 618 as to defendants Kettenbach and Kester, and the Court made its order consolidating Indictments No. 635 and No. 637 with Indictments No. 615, No. 607 and No. 605.

12.

That after the Government had closed its case in the said trial before a jury, the defendants moved the Court to require the Government to elect upon which indictments it would rely for a conviction, and the Government elected to rely upon Indictments numbered 615, 607 and 605, as consolidated, and thereafter the defendants introduced their evidence in their defense before said jury, in said court, and after argument of respective counsel and instructions of the Court, the jury retired to consider their verdict of "Not Guilty" as charged in the several indict-

ments in the above-entitled causes, exclusive of Counts One, Two and Five in case No. 615, which Counts One, Two and Five were not submitted to the jury for their consideration for the reason that a verdict had theretofore been returned in favor of the defendants finding them not guilty upon said counts, which verdict was duly and regularly filed by the Clerk of said Court on February 26, 1910, now on file herein, and a true copy of which is attached hereto, marked Exhibit "C" and made a part hereof as fully as if here set out. [101]

13.

That in said several indictments the same issues are involved as are involved in the above-entitled cause, to wit: The charge of conspiracy to defraud the United States in violation of section 5440, R. S. U. S., and to acquire large tracts of public lands in violation of the Timber and Stone Laws of the United States, by perjury, subornation of perjury and by procuring entymen to file upon the land in violation of law, and it will be necessary to use the same evidence in support of the issues in the above-entitled cause as was used in the several criminal actions in support of the indictments on file herein; and to try the defendants upon the complainant's bill in equity in the above-entitled cause is, in effect, to try the defendants twice for the same offense, which is prohibited by the Constitution of the United States.

14.

That the Government has heretofore elected to prosecute the defendants criminally for the same and

identical charges pleaded and alleged in the above-entitled cause, and having elected to rely upon a criminal prosecution for the punishment of the defendants, the complainant should not be heard or permitted to prosecute a civil action at this time for the purpose of depriving the defendants of their property, and for the purpose of trying and punishing the defendants twice for the same offense.

15.

That the said United States District Court within and for the District of Idaho, both for the Northern and Central Divisions, had and acquired jurisdiction of each of the defendants in each of said indictments and had and possessed jurisdiction of each of the subject [102] matters involved therein, and had and possessed jurisdiction to hear and determine each and all of the matters in issue therein.

WHEREFORE, these defendants pray that their plea of former acquittal be held to be a bar to the prosecution in this action, that this action be dismissed, and that they be permitted to go without day.

WILLIAM F. KETTENBACH.

GEORGE H. KESTER.

WILLIAM DWYER.

GEO. W. TANNAHILL,

Solicitor for Defendants, Residing at Lewiston, Idaho.

[Endorsed]: Filed May 11, 1910. A. L. Richardson, Clerk. [103]

Exhibit "A" [Verdict in Case No. 615].

*United States District Court, Northern Division,
District of Idaho.*

No. 615.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

WILLIAM F. KETTENBACH, GEORGE H.
KESTER and WILLIAM DWYER,

Defendants.

We, the jury in the above-entitled cause, find the defendant William F. Kettenbach Not Guilty as charged in the first count of the indictment, and we find the defendant William F. Kettenbach Not Guilty as charged in the second count of the indictment, and we find the defendant William F. Kettenbach Guilty as charged in the third count of the indictment, and we find the defendant William F. Kettenbach Guilty as charged in the fourth count in the indictment, and we find the defendant William F. Kettenbach Not Guilty as charged in the fifth count of the indictment, and we find the defendant George H. Kester Not Guilty as charged in the first count of the indictment, and we find the defendant George H. Kester Not Guilty as charged in the second count of the indictment, and we find the defendant George H. Kester Guilty as charged in the third count of the indictment, and we find the defendant George H. Kester Guilty as charged in the fourth count of the indictment, and we find the defendant George H.

Kester Not Guilty as charged in the fifth count of the indictment, and we find the defendant William Dwyer Not Guilty as charged in the first count of the indictment, and we find the defendant William Dwyer Not Guilty as charged in the second count of the indictment, and we find the defendant William Dwyer Guilty as charged in the third count of the indictment, and we find the defendant William Dwyer Guilty as charged in the fourth count of the indictment, and we find the defendant William Dwyer Not Guilty as charged in the fifth count of the indictment.

M. D. FREEDENBERG,
Foreman of the Jury.

[Endorsed]: No. 615. In the District Court of the United States for the District of Idaho. United States of America vs. William F. Kettenbach, George H. Kester and William Dwyer. Verdict. Filed June 16, 1907. A. L. Richardson, Clerk.
[104]

Exhibit "B" [Motion to Consolidate Causes Nos. 605, 607, and 615].

UNITED STATES OF AMERICA.

*In the District Court of the United States for the
District of Idaho, Central Division.*

No. 615.

UNITED STATES OF AMERICA,

vs.

WILLIAM F. KETTENBACH, GEORGE H.
KESTER and WILLIAM DWYER.

No. 607.

UNITED STATES OF AMERICA

vs.

WILLIAM DWYER, GEORGE H. KESTER and
WILLIAM F. KETTENBACH.

No. 605.

UNITED STATES OF AMERICA

vs.

WILLIAM DWYER, GEORGE H. KESTER and
WILLIAM F. KETTENBACH (Impleaded
With JACKSON O'KEEFE).

NOW COMES the United States of America, by Peyton Gordon, Esq., Special Assistant to the Attorney General of the United States, and attorney for the plaintiff in this behalf, and MOVES the Court to consolidate the above-entitled causes for trial against George H. Kester and William F. Kettenbach and William Dwyer, defendants therein named, said motion being based upon the files and records in said causes.

Boise, Idaho, January 31, 1910.

PEYTON GORDON,

Special Assistant to the Attorney General of the
United States and Attorney for said Plaintiff.

Received copy Feby. 1, 1910.

GEO. W. TANNAHILL,

Atty. for Defts. [105]

Exhibit "C" [Verdict in Cases Nos. 605, 607 and 615].

In the District Court of the United States, District of Idaho, Northern Division.

No. 615.

THE UNITED STATES

vs.

WILLIAM F. KETTENBACH, GEORGE H. KESTER and WILLIAM DWYER.

No. 605.

THE UNITED STATES

vs.

JACKSON O'KEEFE, WILLIAM DWYER, GEORGE H. KESTER and WILLIAM F. KETTENBACH.

No. 607.

THE UNITED STATES

vs.

WILLIAM DWYER, GEORGE H. KESTER and WILLIAM F. KETTENBACH.

We, the jury in the above-entitled consolidated causes, find the defendants, William F. Kettenbach, George H. Kester and William Dwyer, not guilty as charged in the several Indictments, in the above-entitled causes, exclusive of counts, one, two, and five in cause numbered 615.

WM. B. ALLISON,
Foreman.

[Endorsed]: No. 615—Consolidated. U. S. District Court, Northern Division, District of Idaho. The United States vs. William F. Kettenbach et al. Verdict. Filed Feb. 26, 1910. A. L. Richardson, Clerk. [106]

[Marshal's Return of Service of Alias Subpoena Ad Respondendum, etc.]

I hereby certify that I received the within alias subpoena ad respondendum, together with three duplicates of alias subpoena ad respondendum and three certified copies of amendments to bill of complaint at Moscow, Latah County, Idaho, on the 18th day of March, 1910, and served the same upon William F. Kettenbach by handing to and leaving with the said William F. Kettenbach, a duplicate of the within alias subpoena ad respondendum, together with a certified copy of the amendments to bill of complaint, personally, at Lewiston, Nez Perce County, Idaho, on the 22d day of March, 1910, said William F. Kettenbach accepting service in writing of the original bill of complaint as of the 22d day of March, 1910, at Lewiston, Idaho.

Served the same upon Geo. H. Kester and William Dwyer by handing to and leaving with Geo. W. Tannahill, attorney for the said Geo. H. Kester and William Dwyer, a duplicate of the within alias subpoena ad respondendum, together with a certified copy of the amendments to bill of complaint, personally, at Lewiston, Nez Perce County, Idaho, on the 22d day of March, 1910, the said Geo. W. Tannahill accepting service in writing of the original bill of

complaint as of the 22d day of March, 1910, at Lewiston, Nez Perce County, Idaho.

S. L. HODGIN,
U. S. Marshal.
By J. E. Greene,
Deputy.

Moscow, Idaho, April 4th, 1910. [107]

*In the Circuit Court of the United States for the
Northern Division of the District of Idaho.*

IN EQUITY—No. 407.

THE UNITED STATES OF AMERICA,
Complainant,
vs.

WILLIAM F. KETTENBACH, GEORGE H.
KESTER and WILLIAM DWYER,
Defendants.

Subpoena Ad Respondendum.

The President of the United States of America, to
William F. Kettenbach, George H. Kester and
William Dwyer, Greeting:

You and each of you are hereby commanded that
you be and appear in said Circuit Court of the
United States, at the courtroom thereof, in Moscow,
in said District, on the first Monday of April next,
which will be the 4th day of April, A. D. 1910, to
answer the exigency of a Bill of Complaint exhibited
and filed against you in our said Court, wherein The
United States of America is complainant and you are
defendants, and further to do and receive what our
said Circuit Court shall consider in this behalf, and

this you are in no wise to omit under the pains and penalties of what may befall thereon.

And this is to COMMAND you, the MARSHAL of said District, or your DEPUTY, to make due service of this our WRIT of SUBPOENA and to have then and there the same.

Hereof fail not.

Witness the Honorable MELVILLE W. FULLER, Chief Justice of the Supreme Court of the United States, and the Seal of our said Circuit Court affixed at Boise in said District, this 9th day of March in the year of our Lord One Thousand Nine Hundred and Ten and of the [108] Independence of the United States the One Hundred and thirty-fourth.

A. L. RICHARDSON,
Clerk.

[Endorsed]: Filed June 14, 1910. A. L. Richardson, Clerk. [109]

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

IN EQUITY—No. 407.

THE UNITED STATES OF AMERICA,
Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H.
KESTER and WILLIAM DWYER,
Defendants.

**Stipulation [That Answer and Disclaimer to Bill
Shall Stand as Answer and Disclaimer to Bill as
Amended].**

STIPULATION.

IT IS HEREBY stipulated and agreed by and between the parties to this cause that the answer and disclaimer heretofore filed by and on behalf of defendants to the complainant's Bill of Complaint in said cause shall stand as their answer and disclaimer to the complainant's Bill of Complaint as Amended, and,

IT IS HEREBY further stipulated and agreed by and between said parties that the replications heretofore filed by and on behalf of complainant in the above-entitled cause to the answer and disclaimer of the several defendants in said cause to complainant's Bill of Complaint shall stand as the replications to the said answer and disclaimer of said defendants to said Bill of Complaint as Amended.

PEYTON GORDON,

Special Assistant to the Attorney General, Solicitor
for Complainant.

GEO. W. TANNAHILL,

Solicitor for Defendants, William F. Kettenbach,
George H. Kester and William Dwyer.

[Endorsed]: Filed June 25, 1910. A. L. Richardson, Clerk. [110]

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

IN EQUITY—No. 407.

THE UNITED STATES OF AMERICA,
Complainant,
vs.

WILLIAM F. KETTENBACH and Others,
Defendants.

Order [Appointing Warren Truitt of Moscow,
Idaho, Special Examiner to Take Testimony,
etc.].

ORDER.

The parties to this cause having requested the Court to appoint an Examiner,

It is hereby ordered that Warren Truitt, Esq., of Moscow, Idaho, be, and he hereby is appointed a Special Examiner herein, to take the testimony in this cause, and to report the same to the Court with all convenient speed. His compensation for such services will be at the rate of \$10.00 per diem.

Dated July 15th, 1910.

FRANK S. DIETRICH,
Judge.

[Endorsed]: Filed July 15th, 1910. A. L. Richardson, Clerk. [111]

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

IN EQUITY—Nos. 388, 406 and 407.

UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH et al.,

Defendants.

**Order [Appointing A. M. Wing Special Examiner to
Take Testimony in Portland, Oregon.]**

ORDER.

Upon the application of complainant in the above-entitled causes, it is this 15th day of July, 1910, ordered, that A. M. Wing of Portland, Oregon, be, and he is hereby appointed and constituted a Special Examiner of this Court for the purpose of taking testimony in the said causes and he is authorized and empowered as such Special Examiner to take the testimony herein of such witnesses as may be offered by either party at Portland, Oregon.

FRANK S. DIETRICH,

District Judge. [112]

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

IN EQUITY—Nos. 388, 406 and 407.

UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH et al.,

Defendants.

**Order [Appointing Leo Longley Special Examiner
to Take Testimony in Los Angeles, Cal.].**

ORDER.

Upon the application of the complainant in the above-entitled causes, it is this 15th day of July, 1910, ordered, that Leo Longley of Los Angeles, California, be, and he is hereby appointed and constituted a Special Examiner of this Court for the purpose of taking testimony in the said causes and he is authorized and empowered as such Special Examiner to take the testimony herein of such witnesses as may be offered by either party at Los Angeles, California.

FRANK S. DIETRICH,

District Judge. [113]

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

IN EQUITY—Nos. 388, 406 and 407.

UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH et al.,

Defendants.

**Order [Appointing Warren Truitt Special Examiner
to Take Testimony at Spokane, Wash.].**

ORDER.

Upon the application of Complainant in the above-entitled causes, it is ordered that Warren Truitt of Moscow, Idaho, be, and he is hereby appointed and constituted a Special Examiner of this Court, for the

purpose of taking testimony in the said causes, and he is authorized and empowered as such Special Examiner to take the testimony therein of such witnesses as may be offered by either party at Spokane, Washington.

Dated August 20, 1910.

FRANK S. DIETRICH,
Judge. [114]

**[Order Extending Time to October 15, 1910, for
Taking of Testimony.]**

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

IN EQUITY—No. 407.

THE UNITED STATES OF AMERICA,
Complainant,

vs.

WILLIAM F. KETTENBACH and Others,
Defendants.

Upon application of the complainant, by Peyton Gordon, Special Assistant to the Attorney General, its solicitor, and a number of the defendants through their solicitors, George W. Tannahill and C. C. Cavanaugh,

It is ordered, that the time for the taking of the testimony in the above-entitled cause be, and the same hereby is, extended to and including the 15th day of October, 1910. The complainant to begin the

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taking of its testimony on the 22d day of August, 1910.

Dated July 15, 1910.

FRANK S. DIETRICH,
Judge.

[Endorsed]: Filed July 15th, 1910. A. L. Richardson, Clerk. [115]

[**Prae**cipe for Subpoena Returnable at **Moscow**.]

*In the Circuit Court, United States, District of
Idaho.*

IN EQUITY—388.

THE UNITED STATES

vs.

W. F. KETTENBACH et al.

The Clerk of said Court will issue Subpoena for the following named persons to appear before the Examiner of said Court, at Moscow, at 9 o'clock A. M., on the 22d day of August, 1910, then and there to testify in behalf of the United States:

John Doe.

This 18th day of July, 1910.

PEYTON GORDON,
Special Asst. to the Attorney General.

[Endorsed]: Filed this 18th day of July, 1910.
A. L. Richardson, Clerk. [116]

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

IN EQUITY—No. 407.

THE UNITED STATES OF AMERICA

vs.

WILLIAM F. KETTENBACH et al.

**Praecipe for Subpoena [Returnable at Lewiston,
Idaho].**

To the Clerk of said Court:

Sir: Issue subpoena, returnable before Hon. Warren Truitt, Special Examiner for said Court, at room 301 Weisgerber Bldg., Lewiston, Idaho, at 9 o'clock in the morning of August 24, 1910, for the following named witnesses, to testify for the complainant:

Frank J. Bonney, Oro Fino, Ida.

Respectfully,

PEYTON GORDON,

Special Assistant to the Attorney General of the
United States.

[Endorsed]: Filed Aug. 11th, 1910. A. L. Richardson, Clerk. [117]

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

IN EQUITY—Nos. 388, 406 and 407.

UNITED STATES OF AMERICA,

Complainant,

vs.

WM. F. KETTENBACH et al.,

Defendants.

**Stipulation [Concerning Hearing of Motion to
Reopen Causes].**

STIPULATION.

IT IS HEREBY AGREED by and between counsel for the respective parties in the above-entitled causes that the hearing upon a motion and notice thereon heretofore served and filed in these causes for the purpose of reopening the said causes and the taking of additional and newly discovered testimony therein, may be heard at a future date by agreement of counsel, and that upon such agreement by counsel as to a date definite and specific on further notice of said hearing, said notice is waived.

IT IS FURTHER AGREED by and between the respective parties thereto that the hearing of this motion, and if the same is granted and such additional testimony taken therein, shall in no manner interfere with the speeding of the causes or the preparation of the briefs on the testimony already taken.

It is further stipulated and agreed by and between the parties to said causes that the deposit slip set out in the affidavit served herewith both in the front and the back of the same is in the handwriting of the defendant Wm. F. Kettenbach, and that the same is a part of the files of the Lewiston National Bank, and that [118] said deposit slip is now on file with the Clerk of this Court in the case of U. S. vs. Kester

and Kettenbach, marked Pltfs. Exhibit No. 39.

PEYTON GORDON,
Solicitor for Complainant.
GEO. W. TANNAHILL
Solicitor for Defendants.
J. E. BABB,
Solicitor for Certain Defendants.

[Endorsed]: Filed April 20, 1911. A. L. Richardson, Clerk. [119]

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

IN EQUITY—Nos. 388, 406 and 407.

UNITED STATES OF AMERICA,
Complainant,
vs.

WM. F. KETTENBACH et al.,
Defendants.

Notice of Motion [for Order Opening Causes].

NOTICE OF MOTION.

To the Above-named Defendants, Jas. E. Babb, Geo.
W. Tannahill, Your Attorneys, and to Each of
You:

YOU WILL PLEASE TAKE NOTICE that the undersigned, solicitor for complainant, will on the 26th day of April, 1911, before the above-entitled court in the Federal Courtrooms, city of Boise, Idaho, at the hour of 10 o'clock A. M., or as soon thereafter as counsel can be heard, *will* move the Court for an order opening the above-entitled causes for the purpose of introducing additional and newly

discovered testimony, in accordance with motion herewith served upon you, together with this notice. Upon the hearing of said motion counsel will use notice of motion; the motion and the affidavit attached to said motion; all the files and records in the above-entitled causes or so much thereof as may be necessary.

PEYTON GORDON,

Solicitor for Complainant. [120]

Service of the above notice, together with a copy of the motion and the attached affidavit thereto, acknowledged by receipt of copies this 20th day of April, 1911.

GEO. W. TANNAHILL,

Solicitor for Defendants.

J. E. BABB,

Solicitor for Certain Defendants.

[Endorsed]: Filed April 20, 1911. A. L. Richardson, Clerk. [121]

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

IN EQUITY—Nos. 388, 406 and 407.

UNITED STATES OF AMERICA,

Complainant,

vs.

WM. F. KETTENBACH et al.,

Defendants.

Motion [for Order Opening Causes].

MOTION.

Comes now Peyton Gordon, Special Assistant to

the Attorney General, solicitor for the complainant in the above-entitled causes, and moves the Court for an order opening the above-entitled causes for the purpose of including in the record in said causes additional and newly discovered evidence, as based upon the affidavit hereto attached to this motion and made a part hereof.

PEYTON GORDON,
Special Assistant to Attorney General. [122]

[Affidavit of Peyton Gordon.]

State of Idaho,
County of Ada,—ss.

Peyton Gordon, being first duly sworn, on oath deposes and says he is Special Assistant to the Attorney General of the United States, and alleges for the complainant in the above-entitled causes, that on the 24th day of October, 1910, the testimony in the above-entitled causes was closed and that the time for preparing and filing briefs in the same on behalf of the complainant has been extended to and including May 20, 1911; that since the closing of said causes, new and additional testimony has been discovered, which said testimony is relevant, important and material in proving the allegations of complainant's Bills of Complaint; further, that said testimony is indispensable for the proper presentation of said causes to the Court on the allegations in said bills as aforesaid; that said additional testimony was discovered after the closing of the taking of the testimony in said causes as aforesaid and could not with due diligence have been discovered

before, and in truth and in fact the existence of such additional testimony was not known to your affiant and could not have been known with all due diligence until a date subsequent to the closing of said testimony as aforesaid; that such newly discovered testimony is of the following nature:

A deposit slip of the Lewiston National Bank, Lewiston, Idaho, which is as follows:

THE LEWISTON NATIONAL BANK,
Lewiston, Idaho.

Deposited by Kittie E. Dwyer,

4-26-1904. [123]

two checks	
given to	
Wiggin for	
cash.....	98.00
50	
48	2.00
—	—

Less cash.....	96.00
----------------	-------

And on the back of said deposit slip:

Guy Wilson.....	8
Greenberg.....	8
Bingham.....	8
McMillan	8
Mrs. Rowlands.....	8
J. O'Keefe	8
Prentice.....	8
E. Taylor	8
Dammorell	8

vs. William F. Kettenbach et al. 4703

Mrs. Justice	8
C. W. Taylor.....	8
F. Justice	8
	<hr/>
	96
J. O'Keefe	8
	<hr/>
	88

The purpose of the introduction of this exhibit and the evidence related and incident thereto is to support the allegations of plaintiff's Bills of Complaint and show that the defendants, Kester and Kettenbach, paid the filing fees in the land office at Lewiston, Idaho, upon the timber claims of the persons whose names are enumerated on the back thereof.

PEYTON GORDON.

Subscribed and sworn to before me this 20th day of April, 1911.

A. L. RICHARDSON,
Clerk.

[Endorsed]: Filed April 20, 1911. A. L. Richardson, Clerk. [124]

*In the District Court of the United States for the
District of Idaho, Central Division.*

Case No. 407.

UNITED STATES OF AMERICA,
Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H. KESTER,
and WILLIAM DWYER,
Defendants.

Decree.

This cause coming on again to be heard upon the Bill of Complaint, the Answer thereto, and the replication of the complainant to such Answer, and upon the proofs taken and heard in said cause, and upon the report of Warren Truitt, Esq., Referee, to whom the said cause was referred to take the testimony and report the same to the Court; and the arguments by solicitors for complainant and defendants; upon due consideration of the pleadings and the evidence and such arguments, the Court being fully advised in the premises,

IT IS ORDERED, ADJUDGED AND DECREED that this suit be and the same is hereby dismissed out of court for want of equity, and that neither party recover costs.

AND IT IS SO ORDERED.

Dated this 15th day of April, A. D. 1912.

FRANK S. DIETRICH,
Judge of U. S. Court.

[Endorsed]: Filed April 15, 1912, A. L. Richardson, Clerk. [125]

*In the District Court of the United States for the
District of Idaho, Central Division.*

IN EQUITY—No. 407.

THE UNITED STATES OF AMERICA,
Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H. KESTER, and WILLIAM DWYER,
Defendants.

Petition for Appeal.

To the Judge of the District Court of the United States, for the District of Idaho:

Your petitioner, the United States of America, the complainant in the above-entitled cause, lately pending in the court above named, respectfully represents and shows that in said cause there was entered at the February term of said court in the year 1912, on the 15th day of April, 1912, a final decree greatly to the prejudice and injury of your said petitioner, by which said decree the bill of complaint filed by your said petitioner as complainant in said cause was dismissed, and which said decree is erroneous and inequitable in many particulars, some of which are specified and assigned as errors by your petitioner in an assignment of errors lately filed by your said petitioner in the said cause, in the office of the Clerk of said Court.

Wherefore, to the end that your said petitioner may obtain relief in the premises and have opportunity [126] to show the said errors complained of, and that the said errors may be corrected and the said decree reversed, your said petitioner prays that it may be allowed in the said cause an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, and that proper orders to the allowance of such an appeal may be made by this Court.

GEO. W. WICKERSHAM,

Attorney General of the United States,

PEYTON GORDON,

Special Assistant to the Attorney General,

Solicitors for Complainant.

[Endorsed]: Filed Sept. 16, 1912. A. L. Richardson, Clerk. [127]

*In the District Court of the United States for the
District of Idaho, Central Division.*

IN EQUITY—No. 407.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH and Others,

Defendants.

Assignment of Errors.

Now comes the United States of America, the complainant in the above-entitled cause, and, with a view to the obtaining and the prosecution of an appeal from the decree lately entered in the said cause in the court above named, files this the said complainant's assignment of errors in the said decree, as stating and designating the errors in the said decree, upon which the said complainant intends to rely in such prosecution of the said appeal.

And the said complainant assigns for such errors and says that the said United States District Court in rendering and entering the said decree erred in these matters and things, that is to say:

I. That the said Court erred in dismissing the bill of complaint filed by the said complainant in the said cause. [128]

II. That the said Court erred in not granting by decree appropriate to that end the relief prayed

by the said complainant in the bill of complaint, as amended, filed by said complainant in the said cause.

III. That the Court erred in failing to find from the evidence in said cause that the defendants named in the said bill of complaint as amended had conspired among themselves, with each other, and with divers other persons named therein and named and indicated in the evidence, to defraud the United States in the manner and for the purposes stated and charged in said bill of complaint as amended, and that the said defendants did so defraud the United States in such manner and in respect of the lands of the United States designated and described in the said bill.

IV. That the said Court erred in finding and in holding that the preponderance of the evidence is against the theory that the defendants, Kester, Kettenbach and Dwyer, were jointly interested in the acquisition of title to the lands involved in this cause, as set out and described in complainant's bill of complaint as amended.

V. That the said Court erred in finding and in holding that the defendants did not have any knowledge or reason to believe that Harvey J. Steffey had any unlawful arrangement or understanding with the entrymen named and mentioned in said bill of complaint as amended.

VI. That the said Court erred in failing to find and to hold that Harvey J. Steffey was the agent of [129] the said defendants in procuring the entries involved in complainant's bill of complaint as

amended to be made in fraud of the United States, and in fraud of the laws of the United States.

VII. That the said Court erred in failing to find and to hold that the defendants had reason to believe, and had knowledge of the fact that Harvey J. Steffey had unlawful arrangements, understandings and agreements with all of the entrymen mentioned and named in said bill of complaint as amended, relative to the acquisition and disposition by said entrymen of the lands contained in their entries as charged in said bill of complaint.

VIII. That the said Court erred in finding and in holding in effect that the defendants, Kester and Kettenbach, purchased the lands designated and described in complainant's bill of complaint as amended, under such circumstances as constituted the said defendants innocent purchasers of the said land in good faith, for value and without knowledge or notice of any fraud or other illegality in the title to the said lands.

IX. That the Court erred in finding and holding that the allegations in said complainant's bill of complaint as amended are not sustained by the testimony and evidence in said cause, and that there are no equities therein.

GEO. W. WICKERSHAM,

Attorney General of the United States,

PEYTON GORDON,

Special Assistant to the Attorney General,

Solicitors for Complainant.

[Endorsed]: Filed Sept. 16th, 1912. A. L. Richardson, Clerk. [130]

*In the District Court of the United States for the
District of Idaho, Central Division.*

IN EQUITY—No. 407.

THE UNITED STATES OF AMERICA,
Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H. KES-
TER, and WILLIAM DWYER,
Defendants.

Order Allowing Appeal.

This day came The United States of America, the complainant in the above-entitled cause, and presented its petition for an appeal and an assignment of errors accompanying the same, which petition, upon consideration of the Court, is hereby allowed, and the Court allows an appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

September 23d, 1912.

FRANK S. DIETRICH,
Judge.

[Endorsed]: Filed Sept. 23, 1912. A. L. Richardson, Clerk. [131]

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

IN EQUITY—Nos. 388, 406, 407.

THE UNITED STATES OF AMERICA,
Complainant,

vs.

WILLIAM F. KETTENBACH and Others,
Defendants.

Stipulation [Concerning Taking of Testimony and Evidence].**STIPULATION.**

WHEREAS, Special Examiners heretofore have been appointed by the Court to take and hear the testimony in all of the above-entitled causes, and each of said causes charge conspiracy to defraud the United States of certain of its timber lands, and the Bill of Complaint in each of said causes specifically describes the several tracts of land sought to be recovered by the Government, and refers to the several patents sought to be cancelled;

With the view of speeding said causes to a hearing, and for the purpose of economy in the taking of the testimony in said causes, and making of the record in the same for the Court, it is hereby stipulated and agreed by and between the respective parties to the above-entitled causes that the testimony of all of the witnesses of all the parties to the said causes produced and taken before said examiners heretofore appointed, or before any examiners or persons hereafter appointed by said Court, or agreed upon between the parties to these causes to act in such capacity in all of said causes shall be considered as having been taken in each and all of said causes, and shall go to make up the record in each and all of said causes, with the same force and effect as though said causes were consolidated, subject, however, to the defendants' objection made at the time of the introduction of any evidence so offered that the same is incompetent, irrelevant and immaterial.

It is further stipulated by and between the parties to said causes that the evidence offered by and on behalf of any of said parties in any of said causes shall be considered as offered and [132] received in evidence in all of said causes unless at the time of the offering of said evidence the party so offering the same shall specifically specify as to which of said causes the same is offered.

(Signed:) PEYTON GORDON,

Special Assistant to the Attorney General,
Solicitor for Complainant.

JAMES E. BABB,

Solicitor for Lewiston National Bank, Idaho Trust Company, Potlatch Lumber Company, Clearwater Timber Company, Frank W. Kettenbach, Defendants.

GEO. W. TANNAHILL,

Solicitor for William F. Kettenbach, George H. Kester, William Dwyer, Elizabeth White, Edna P. Kester, Martha E. Hallett, Kittie E. Dwyer, Defendants.

MORGAN & MORGAN,

Solicitors for Western Land Company, Defendant.

EUGENE A. COX,

Solicitor for Elizabeth Kettenbach, Curtis Thatcher, Elizabeth W. Thatcher, and Elizabeth White, Defendants. [133]

**[Stipulation Concerning Memoranda and Abstract
of Exhibits.]**

*In the Circuit Court of the United States for the
District of Idaho, Northern Division.*

IN EQUITY—No. 388.

UNITED STATES OF AMERICA,

Complainant,

vs.

W. F. KETTENBACH et al.,

Defendants.

IN EQUITY—No. 406.

UNITED STATES OF AMERICA,

Complainant,

vs.

W. F. KETTENBACH et al.,

Defendants.

IN EQUITY—No. 407.

UNITED STATES OF AMERICA,

Complainant,

vs.

W. F. KETTENBACH et al.,

Defendants.

It is hereby stipulated by and between the parties to the above-entitled causes that the memoranda and abstract of the exhibits in said causes, hereto attached, consisting of pages numbered consecutively from 1 to 321, shall have the same force and effect as though said exhibits were copied in full in the tran-

script of the record of said causes on appeal to the Circuit Court of Appeals for the Ninth Circuit, provided, however, that any party claiming any error or omission in the said memoranda and abstract, or desiring to have any original document heretofore offered in evidence in any of said causes submitted to said Circuit Court of Appeals, may without application to said Court of Appeals have any such original document sent by the Clerk to the Clerk of said Court of Appeals, and any such claimed error or omission shown by a copy certified by the [134] Clerk below and filed with the Clerk of said Court of Appeals, with two copies thereof and a copy thereof served personally or by U. S. mail on the adverse party, and that any matter so supplied shall have like effect as if supplied on order of said Court of Appeals.

Dated this 12th day of December, A. D. 1912.

PEYTON GORDON,

Special Assistant to the Attorney General,
Solicitor for Complainant.

GEO. W. TANNAHILL,

Solicitor for Defendants William F. Kettenbach,
George H. Kester, William Dwyer, Elizabeth
White, Edna P. Kester, Martha E. Hallett and
Kitty E. Dwyer.

JAMES E. BABB,

Solicitor for Defendants, Clearwater Timber Com-
pany, Lewiston Nat'l Bank, Idaho Trust Com-
pany and F. W. Kettenbach.

EUGENE A. COX.

CLARENCE W. ROBNETT,

Defendant.

[Endorsed]: Filed Dec. 14, 1912. A. L. Richardson, Clerk. [135]

**[Order Allowing Withdrawal of Original Exhibits
for Use in Circuit Court of Appeals.]**

*In the District Court of the United States, for the
District of Idaho, Northern Division.*

IN EQUITY—Nos. 388, 406, 407.

THE UNITED STATES OF AMERICA,
Complainant,

vs.

WILLIAM F. KETTENBACH et al.,
Defendants.

It is hereby ordered, that the following original exhibits, to wit: Plaintiff's Exhibits 6s, 6u, 6t, 80, 84, 85, 104, 105, 106, 118, 119, 120; and Defendant's Exhibits "B-1," "A," "B," "C," "D," "Y," "Z," and "A-1" (affidavit of Effie A. Jolley); and "A-2," "F-1," "H-1," "I-1," "L-1," "M-1," offered in evidence at the trial of said causes, be allowed to be withdrawn from the files of this court, for the purpose of being transmitted to the United States Circuit Court of Appeals for the Ninth Circuit, as a part of the record on appeal to the said United States Circuit Court of Appeals, in these causes to be returned to the Clerk of this Court, upon the termination of said appeal.

Dated at Boise, Idaho, December 2d, 1912.

FRANK S. DIETRICH,

Judge.

[Endorsed]: Filed December 2d, 1912. A. L. Richardson, Clerk. [136]

*In the District Court of the United States Within
and for the District of Idaho, Central Division.*

IN EQUITY—#407.

UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H.

KESTER, and WILLIAM DWYER,

Defendants.

Citation [on Appeal].

CITATION.

United States of America,—ss.

The President of the United States, to William F. Kettenbach, George H. Kester, and William Dwyer, and to George W. Tannahill of Lewiston, Idaho, Their Attorney, Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit of Appeals for the Ninth Circuit, to be held at the city of San Francisco, State of California, within thirty days from the date of this writ, pursuant to an appeal filed in the clerk's office of the District Court of the United States, within and for the District of Idaho, Central Division, wherein the United States of America is Plaintiff, and you, William F. Kettenbach, George H. Kester, and William Dwyer are the defendants in error, to show cause, if any there be, why the judg-

ment in said appeal mentioned should not be corrected, and speedy justice not be done to the parties in that behalf. [137]

WITNESS the Honorable FRANK S. DIETRICH, Judge of the United States District Court in and for the Central Division, District of Idaho, this 23d day of September, A. D. 1912.

FRANK S. DIETRICH,

District Judge.

[Seal]

Attest: A. L. RICHARDSON,

Clerk.

Service of the within Citation and receipt of a copy thereof admitted this —— day of September, 1912.

.....,

.....,

Attorney for Defendants.

Recd. copy of foregoing this 26th day of Sept., 1912.

GEO. W. TANNAHILL,

Atty. for Defendants. [138]

United States of America,

District of Idaho,

Central Division,—ss.

I hereby certify that I served the within and foregoing Citation upon Willam Dwyer on September 26, 1912, and upon William F. Kettenbach on October 1, 1912, at Lewiston, Nez Perce County, in the District of Idaho, Central Division, by then and there delivering to the said William Dwyer and William F. Kettenbach, personally, a true copy of the within Citation.

And I further certify that I served the within Citation on George W. Tannahill, attorney for the Defendants, on the 26 day of September, 1912, at Lewiston, County of Nez Perce, District of Idaho, Central Division, by then and there delivering to the said George W. Tannahill, personally, a true copy of the within Citation.

Dated at Lewiston, in the District of Idaho, Central Division, this 4th day of October, 1912.

S. L. HODGIN,
United States Marshal.
By Wm. Schuldt,
Deputy.

After due search and diligent inquiry I have been unable to find George H. Kester within the District of Idaho. [139]

[Endorsed]: No. 407. In the District Court of the United States for the District of Idaho, Central Division. United States of America vs. William F. Kettenbach et al. Citation. Filed October 17th, 1912. A. L. Richardson, Clerk.

H. Civ. 518 9/24/12. [140]

Return to Record.

And thereupon it is ordered by the Court that the foregoing transcript of the record and proceedings in the cause aforesaid, together with all things thereunto relating, be transmitted to the said United States Circuit Court of Appeals for the Ninth Cir-

cuit, and the same is transmitted accordingly.

[Seal] Attest: A. L. RICHARDSON,
Clerk. [141]

[Certificate of Clerk U. S. District Court to
Transcript of Record, etc.]

*In the Circuit Court of the United States in and for
the District of Idaho, Northern Division.*

BILL IN EQUITY—No. 407.

THE UNITED STATES OF AMERICA,
Plaintiff in Error,

vs.

WILLIAM F. KETTENBACH, GEORGE H.
KESTER, WILLIAM DWYER,
Defendants in Error.

The United States of America,
District of Idaho,—ss.

I, A. L. Richardson, Clerk of the District Court of the United States for the District of Idaho, do hereby certify the foregoing transcript consisting of pages numbered from 1 to 143, inclusive, to be a full, true and correct copy of the record and proceedings in the said court in a certain suit in equity therein lately depending, wherein the United States of America is the complainant, and William F. Kettenbach and (George H. Kester and William Dwyer) are defendants, and numbered four hundred seven, as the same remain of record and on file in the office of the Clerk of said court.

I further certify that the testimony, exhibits or opinion of the Court were filed in the case, but the same were filed in the office of the Clerk of said court in case entitled United States of America vs. William F. Kettenbach and (George H. Kester, William Dwyer, Clarence W. Robnett and Frank W. Kettenbach) and numbered three eighty-eight, which was tried and heard with this case and another case entitled United [142] States of America vs. William F. Kettenbach and (George H. Kester, Clarence W. Robnett, William Dwyer, The Idaho Trust Company, The Lewiston National Bank of Lewiston, Idaho, The Clearwater Timber Company, The Western Land Company, George E. Thompson, Elizabeth W. Thatcher, Curtis Thatcher, Elizabeth White, Edna P. Kester, Elizabeth Kettenbach, Martha E. Hallett, Kittie E. Dwyer, Potlatch Lumber Company, Robert O. Waldman), and numbered 406, in accordance with the stipulation of the parties to the said three causes, all of which are now on appeal to the United States Circuit Court of Appeals for the Ninth Circuit, a copy of which stipulation is set out in the transcript hereto attached.

In testimony whereof I have hereunto set my hand and affixed the seal of said District Court this sixteenth day of December, A. D. 1912.

[Seal]

A. L. RICHARDSON,
Clerk. [143]

[Endorsed]: No. 2211. United States Circuit Court of Appeals for the Ninth Circuit. The United States of America, Appellant, vs. William F. Ket-

tenbach, George H. Kester, and William Dwyer, Appellees. Transcript of Record. Upon Appeal from the United States District Court for the District of Idaho, Central Division.

Filed December 19, 1912.

FRANK D. MONCKTON,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.

**[Order Extending Time to December 19, 1912, to
File Transcript in Circuit Court of Appeals.]**

*In the District Court of the United States Within
and for the District of Idaho, Central Division.*

IN EQUITY—#407.

UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH et al.,

Defendants.

On the application of the Acting Attorney General of the United States, for good cause shown, and it further appearing to the Court that the transcript in this cause is voluminous and cannot be prepared within thirty days from and after the signing of the Citation in said cause,

IT IS THEREFORE ORDERED, that the time for filing said transcript in the Circuit Court of Appeals be and is hereby extended sixty days from

vs. William F. Kettenbach et al. 4721

and after the 20th day of October, A. D. 1912.

Dated this 23d day of September, A. D. 1912.

FRANK S. DIETRICH,

District Judge.

[Endorsed]: No. 407. In the District Court of the United States, District of Idaho, Central Division. The United States of America, Complainant, vs. William F. Kettenbach et al., Defendants. Order Extending Time for Filing Transcript.

No. 2211. United States Circuit Court of Appeals for the Ninth Circuit. No. 407. In the District Court of the United States for the District of Idaho. United States of America, Complainant, vs. William F. Kettenbach et al., Defendants. Order Extending Time for Filing Transcript. Filed Oct. 3, 1912. F. D. Monckton, Clerk. Refiled Dec. 19, 1912. F. D. Monckton, Clerk.

**[Order Enlarging Time to December 26, 1912, to File
Record Thereof and to Docket Cause in Circuit
Court of Appeals.]**

*In the District Court of the United States for the
District of Idaho, Central Division.*

THE UNITED STATES OF AMERICA,

Appellants,

vs.

WILLIAM F. KETTENBACH et al.,

Respondents.

For good cause shown, it is hereby ordered that the time to file the transcript and docket the above-

entitled cause in the U. S. Circuit Court of Appeals be and the same is hereby extended and enlarged from the 19th day of December, 1912, to and including the 26th day of December, 1912.

Dated December 19, 1912.

FRANK S. DIETRICH,

Judge.

[Endorsed]: No. 407. In the District Court of the United States, District of Idaho, Central Division. The United States, Appellant, vs. William F. Kettenbach et al., Respondents. Order Extending Time to File Transcript., Clerk.

No. 2211. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Rule 16 Enlarging Time to and Including Dec. 26, 1912, to File Record Thereof and to Docket Case. Filed Dec. 23, 1912. F. D. Monckton, Clerk.

At a Stated Term, to wit, the October Term A. D. 1912, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Monday, the thirteenth day of January, in the year of our Lord One Thousand Nine Hundred and Thirteen. Present: The Honorable WILLIAM W. MORROW, Circuit Judge; Honorable WILLIAM C. VAN FLEET, District Judge.

No. 2209.

THE UNITED STATES OF AMERICA,

Appellant,

vs.

WILLIAM F. KETTENBACH, GEORGE H. KESTER, CLARENCE W. ROBNETT, WILLIAM DWYER and FRANK W. KETTENBACH,

Appellees.

**Order Consolidating Cases for Hearing and
Argument in Circuit Court of Appeals, etc.**

This case coming to be heard upon motion of the appellant for an order to consolidate with it the case of the United States of America, Appellant, vs. William F. Kettenbach, George H. Kester, Clarence W. Robnett, William Dwyer, The Idaho Trust Company, The Lewiston National Bank, The Clearwater Timber Company, Elizabeth W. Thatcher, Curtis Thatcher, Elizabeth White, Edna P. Kester, Elizabeth Kettenbach, Martha E. Hallett, and Kitty E.

Dwyer, Appellees, No. 2210 upon the docket of this court, and also the case of the United States of America, Appellant, vs. William F. Kettenbach, George H. Kester and William Dwyer, No. 2211 upon the docket of this court, with this case, and upon good cause being shown and counsel for the respective parties consenting thereto, it is hereby ordered that the cases hereinbefore mentioned be consolidated with this case for hearing and argument in this court, and that the record of all of said cases be printed in one record, and that one set of briefs shall suffice for said three cases.